IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 33.

SURPLUS TRADING COMPANY.....*Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error*

MOTION OF DEFENDANT IN ERROR TO AMEND RECORD.

The defendant in error, by his counsel of record, moves the Court for an order amending the agreed statement of facts set forth in the record herein to speak the truth as to the manner in which the United States acquired title to the land in question here, or, in the alternative, to permit further proof to be taken to establish the true facts as to this question, and for reasons therefor states:

I.

The sole question presented by the assignment of errors herein challenges the power of the State of Arkansas to tax personal property of plaintiff in error and claimed by it to have been located within the boundaries of the United States military reservation at Camp Pike, Arkansas, when assessed for taxation. It is argued by plaintiff in error the

property was exempt from taxation by reason of its location. The principal contention of plaintiff in error is that the military reservation at Camp Pike, Arkansas, is without the taxing jurisdiction of the State of Arkansas. This contention is based upon the claim that the land comprising the military reservation at Camp Pike, Arkansas, was acquired by the United States by purchase with the consent of the State of Arkansas, and, therefore, it is argued that by the provisions of subdivision 17, of Article I, Section 8, of the Constitution of the United States, the Camp Pike military reservation is under the exclusive legislative jurisdiction of Congress and without the taxing jurisdiction of the State of Arkansas.

II.

While this cause was pending in the State courts an agreed statement of facts was entered into by and between counsel of record for both parties litigant. (R. 77, 86.) In entering into the stipulation as to the manner in which the lands comprising the Camp Pike military reservation were acquired by the United States it was the intention of the parties to agree only upon the true facts as they actually existed. Counsel for plaintiff in error drafted the stipulation and represented to counsel for defendant in error that the facts set forth therein were true. The agreed statement of facts, among other things, recites fee simple title to the land in the military reservation known as Camp Pike was pruchased by the United States for use as a Federal reservation, or United States Army cantonment. (R. 77, 78.) The agreed statement of facts was prepared by counsel of record for plaintiff in error, who, before and at the time of the execution thereof by counsel of record for defendant in error, represented to counsel of record for defendant in error that the stipulation recited the true facts as to the manner in which the United States acquired title to the land in question

here. Before and at the time of the execution of the agreed statement of facts counsel of record for plaintiff in error also represented to counsel of record for defendant in error they had made a thorough investigation of the facts as to the manner in which the United States acquired title to the lands in question; that the investigation so made included a careful examination of the records of the War Department of the United States, as well as all other available records, and all the records established the fact the United States had purchased the fee simple title to the land in question. Relying upon the statements of counsel of record for plaintiff in error as being true, counsel of record for defendant in error executed the agreed statement of facts as set forth in the printed record herein. (Tr. 77, 78.)

III.

The land in question here, on which the warehouses and buildings were erected and in which the merchandise of plaintiff in error was located, was not purchased by the United States, as recited by the agreed statement of facts, but was donated to the United States. This will be shown by certified copy of deed conveying the land donated to the United States and by affidavit of W. S. Holt. Certified copy of the deed is attached hereto, marked Exhibit No. 1, and made part hereof; and affidavit of W. S. Holt is also hereto attached, marked Exhibit No. 5, and made part hereof.

The land was donated to the United States by Army Post Development Company, an Arkansas corporation. This corporation was organized for the specific purpose of acquiring the land in question and donating it to the United States as an inducement to secure the location of an army cantonment at or near Little Rock, Pulaski County, Arkansas. This will be shown by certified copy of a report filed by Army Post Development Company with the County Clerk of Pulaski County,

Arkansas, the official with whom domestic corporations are, under the laws of Arkansas, required to file reports showing, among other things, the purposes for which incorporated; and by affidavit of W. S. Holt. Certified copy of annual report of Army Post Development Company, filed with the County Clerk of Pulaski County, Arkansas, on 9th of June, 1922, is hereto attached, marked Exhibit No. 2, and made part hereof; and affidavit of W. S. Holt is also hereto attached, marked Exhibit No. 5, and made part hereof.

Army Post Development Company purchased the land from the owners when able to agree on a price to be paid. Where an agreement could not be reached as to the price to be paid the United States exercised the right of eminent domain and instituted condemnation proceedings in the United States District Court for the Western Division of the Eastern District of Arkansas. Army Post Development Company furnished the money required to pay for the lands condemned, as will be shown by certified copies of the judgment and registry record of the United States District Court for the Western Division of the Eastern District of Arkansas in such condemnation proceedings, hereto attached, marked Exhibit No. 3, and made part hereof; and will also be shown by affidavit of W. S. Holt, hereto attached, marked Exhibit No. 5, and made part hereof.

The law firm of which counsel of record for plaintiff in error are members was a stockholder in Army Post Development Company, as will be shown by certificate of the County Clerk of Pulaski County, Arkansas, hereto attached, marked Exhibit No. 4, and made part hereof.

IV.

The United States acquired a few tracts of land included in the Camp Pike military reservation by purchase after the land in question was acquired by donation. However, all of the land

within the Camp Pike military reservation upon which the buildings and warehouses were erected and in which buildings and warehouses the merchandise in question was located, was donated to the United States. This will be shown by affidavit of W. S. Holt, attached hereto, marked Exhibit No. 5, and made part hereof.

V.

Defendant in error and his counsel of record did not know the true facts as to the manner in which the United States acquired the land in question until after the record was filed in the Supreme Court of the United States. Counsel of record for defendant in error, when advised of the true facts, prepared a stipulation amending the record filed in this cause to speak the truth, but counsel of record for plaintiff in error declined to sign it.

Premises considered, defendant in error prays an order amending the agreed statement of facts set forth in the record herein to speak the truth as to the manner in which the United States acquired title to the land in question, or, in the alternative, to permit further proof to be taken to establish the true facts on such issue.

H. W. APPLEGATE,
Attorney General of Arkansas.

SAM T. POE,
TOM POE,
For Defendant in Error.

State of Arkansas,
County of Pulaski.

We, Sam T. Poe and Tom Poe, counsel for defendant in error in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Motion to Amend Record" are true; except such facts as are alleged upon information and belief, and, as to those facts, that we believe them to be true.

SAM T. POE,

TOM POE.

Sworn to and subscribed before me this 4th day of October, 1928.

GRACE LASSITER,
Notary Public, State of Arkansas.

(Seal)

APPENDIX.

EXHIBIT No. 1.

10774.

ARMY POST DEVELOPMENT CO. TO UNITED STATES OF AMERICA. WARRANTY DEED.

KNOW ALL MEN BY THESE PRESENTS: That the Army Post Development Company, a corporation organized under and by virtue of the laws of the State of Arkansas, by its president and secretary, duly authorized thereto by proper resolution of its board of directors, dated June 5, 1919, for the consideration of the sum of One Dollar ($1.00), cash in hand paid to it by the UNITED STATES OF AMERICA, the receipt of which is hereby acknowledged, does grant, bargain and sell unto the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, the following described land, situated in the County of Pulaski, State of Arkansas, to-wit: The southwest quarter (Sw. ¼) of section two (2); the west half of the northwest quarter (W. ½ Nw. ¼) of section two (2); all that part of the northeast quarter of the northwest quarter (Ne. ¼ Nw. ¼) of section two (2) that lies west of the Little Rock and Batesville Pike, except a certain tract of land lying in the northeast corner of the said northeast quarter of the northwest quarter of section two (2), more particularly described as follows: Beginning at the center of the Little Rock and Batesville Pike where it enters said forty-acre tract at or near the northeast corner, thence west along the section line 209½ feet to a culvert, thence in a southerly direction 33 feet to a small maple tree, thence in a southeasterly direction 198½ feet to the center of the Little Rock and Batesville Pike at a certain culvert and at a point 122½ feet south of the point of beginning, thence in a northeasterly direction along the center of the Little Rock and Batesville Pike 122½ feet to the point of beginning, being the same land described in a deed dated February 9, 1916, from Ellen Hardcastle to

the trustees of the Antioch Church of the Pentecostal Church of the Nazarene, recorded in Book 122, page 112, of the records of Pulaski County, being Thirty and 75-100 (30.75) acres; also Two (2) acres off the southeast quarter of the northwest quarter (Se. ¼ Nw. ¼) of section two (2), described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said section 2, run east on the north line of said southeast quarter of the northwest quarter, 918 feet to the center of the Little Rock and Batesville Pike, thence south 95 feet, thence west parallel with the north line 918 feet to the west line of said southeast quarter of the northwest quarter, thence north 95 feet to the point of beginning. Part of the southeast quarter of the northwest quarter (Se. ¼ Nw. ¼) of section 2, beginning on and at the southwest corner of said southeast quarter of the northwest quarter, running thence north six and 50-100 (6.50) chains, thence north 89½ degrees east to the county road, thence south 9 degrees west along the county road six and 59-100 (6.59) chains, thence south 89½ degrees west ten and 9-100 (10.09) chains to the place of beginning, containing Six and 92-100 (6.92) acres, as shown by plat recorded with deed in Deed Record Book No. 70, page 371, of the deed records of Pulaski County; the northeast quarter (Ne. ¼) of section three (3); the west half of the southeast quarter (W. ½ Se. ¼) of section three (3); the northeast quarter of the southeast quarter (Ne. ¼ Se. ¼) of section three (3); the north half of the southeast quarter of the southeast quarter (N. ½ Se. ¼ Se. ¼) of section three (3); the west half of the southwest quarter (W. ½ Sw. ¼) of section three (3); the northwest quarter of the northwest quarter (Nw. ¼ Nw. ¼) of section three (3); the south half of the northeast quarter (S. ½ Ne. ¼) of section four (4); the northwest quarter of the northeast quarter (Nw. ¼ Ne. ¼) of section four (4); the northwest quarter (Nw. ¼) of section four (4); the south half (S. ½) of section four (4); all of section five (5), except lot one (1) and a strip 33 links wide off the north side of lot four (4), in a subdivision of the east half of the northwest quarter (E. ½ Nw. ¼) of said section 5, deeded to J. H. Love by deed dated June 15, 1908, recorded in Book 95, page 329, of the records of Pulaski

County, and also except a part of lot two (2) in the said subdivision of the east half of the northwest quarter of section 5, beginning at the northeast corner of said lot 2 and run 210 feet south, thence 210 feet west, thence 210 feet north, thence 210 feet east to the point of beginning, deeded to School District No. 8 of Pulaski County, Arkansas, by deed dated August 22, 1916, recorded in Book 124, page 467, of the records of Pulaski County; the north half of the northeast quarter (N. ½ Ne. ¼) of section eight (8); the southeast quarter of the northeast quarter (se. ¼ Ne. ¼) of section eight (8); the north half (N. ½) of section nine (9); the northwest quarter (Nw. ¼) of section ten (10); all that part of the southeast quarter (Se. ¼) of section nine (9) and the southwest quarter (Sw. ¼) of section ten (10) that lies north of a line described as follows: Commence at the northwest corner of the southeast quarter of section 8 and run thence in a southeasterly direction to the northwest corner of the south half of the northeast quarter of the southeast quarter of section 9, run thence from said point in a southeasterly direction to a point on the north and south center line of section 10, 330 feet south of the northeast corner of the southeast quarter of the southwest quarter of section 10; all of the above dscribed land being in Township Two (2) North, Range Twelve (12) west.

Also the south half of the south half of the southeast quarter (S. ½ S. ½ Se. ¼) of section thirty-four (34); the south half of the southwest quarter of the southwest quarter (S. ½ Sw. ¼ Sw. ¼) of section thirty-five (35), Township Three (3) North, Range Twelve (12) West.

Also a right-of-way through the south half of the northeast quarter of the southeast quarter (S. ½ Ne. ¼ Se. ¼) of section nine (9), and through the south half of the southeast quarter (S. ½ Se. ¼) of section nine (9), Township Two (2) North, Range Twelve (12) West, 100 feet in width extending 50 feet on each side of the center line of the road as now constructed, extending from South Boulevard in a southerly direction through the land in said section nine (9).

To have and to hold the same unto the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, with all appurtenances thereunto belonging.

And it hereby covenants with the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, with all appurtenances thereunto belonging.

And it hereby covenants with the said United States of America that it will forever warrant and defend the title to said lands against all lawful claims whatever.

IN TESTIMONY WHEREOF, The name of the grantor is hereunto affixed by its President, and its seal affixed by its Secretary, this 6th day of June, 1919.

ARMY POST DEVELOPMENT COMPANY,
By Ed Cornish, President.

(Corporate Seal)

Attest: Edward B. Downie, Secretary.

State of Arkansas,
County of Pulaski. ss.

On this 9th day of July, 1919, before me, W. S. Holt, a notary public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Ed Cornish and Edward B. Downie, secretary, to me personally well known, who stated that they were the president and secretary of the Army Post Development Company, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and in behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 9th day of July, 1919.

W. S. HOLT, Notary Public.

(Seal)

My commission expires June 18, 1922.

Filed for record July 28, 1919, at 3:08 o'clock P. M., and recorded July 29, 1919.

J. E. CHRISP, Clerk.
By Will Dorough, D. C.

State of Arkansas,
County of Pulaski. ss.

I, O. L. McNair, Clerk of the Circuit Court and ex-Officio Recorder, within and for the County and State aforesaid, do hereby certify that the foregoing is a true, correct and compared copy of a WARRANTY DEED filed for record in this office on the 28th day of July, 1919, at 3:09 P. M., from ARMY POST DEVELOPMENT COMPANY TO UNITED STATES OF AMERICA, numbered 10774, recorded in DEED BOOK 92, at pages 636 and 637.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal as such Clerk on this 4th day of October, 1928.

O. L. McNAIR, Clerk.
By C. H. Baker, D. C.

(Seal)

EXHIBIT No. 2.

CORPORATION'S ANNUAL REPORT.

We, the undersigned, Ed Cornish, President, and Edward B. Downie, Secretary, of the Army Post Development Company, address Little Rock, Ark., a corporation duly established under the laws of the State of Arkansas, and in compliance with said laws, do hereby make their report, showing the condition of affairs of said corporation, as nearly as the same can be ascertained on the first day of April, 1922, next preceding the date hereof:

Amount of capital actually paid in	$290,188.90
Cash value of its real estate	Nil
Cash value of its personal estate	
Cash value of its credits	4,447.41
Amount of its debts	Nil

Name of each shareholder, number of shares, name of each stockholder, number of shares, see list enumerated in Book W, pages 77 to 85, inclusive; 123,607 shares.

Capital stock paid in	$291,088.90	
Unpaid subscriptions	17,928.60	
		$309,017.50

Army Post Development Company not an active, going concern organized for purpose of acquiring land and donating same to United States Government as an incentive to bringing Camp Pike to Little Rock. What few funds are on hand are held for future contingencies in winding up the affairs of the company.

Witness our hands and seals this 8th day of June, 1922.

(Signed) ED CORNISH, President.
EDW. B. DOWNIE,
Secretary.

Sworn to before J. L. Collins, N. P., June 9th, 1922.

AFFIDAVIT.

State of Arkansas, }
County of Pulaski, } ss.

We, the undersigned, president and secretary of said corporation, each being duly sworn, state on oath that the

matters and things set out in the foregoing report are true and correct to the best of our knowledge and belief.

(Signed) ED CORNISH, President.
EDW. B. DOWNIE,
Secretary.

Subscribed and sworn to before me this 9th day of June, 1922.

J. L. COLLINS,
Notary Public.

By R. B. BRODIE, Clerk.
By WM. COUNTZ, D. C.

CERTIFICATE OF RECORD.

State of Arkansas, ss.
County of Pulaski,

I, R. B. Brodie, Clerk of the County and Probate Court, within and for the County and State aforesaid, do hereby certify that the foregoing report was filed for record in my office on the 9th day of June, 1922, and that the same is now duly recorded on Page—, Record of Corporate Companies, Vol. Z, Pulaski County, Arkansas.

Witness my hand and seal of said court this 9th day of June, 1922.

R. B. BRODIE, County Clerk,
WM. COUNTZ, Deputy Clerk.

CERTIFICATE OF AUTHENTICATION.

State of Arkansas, ss.
County of Pulaski,

I, W. S. Rogers, Clerk of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that the foregoing Z, page 132, of written matter contains a true, complete and perfect transcript of the Corporation Annual Report of the Army Post Development Company of Pulaski County, Arkansas, as therein set forth, and as the same appears on file and of record in Record Book ...., Volume Z, Page 132, Pulaski County, State of Arkansas.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) W. S. ROGERS,
County and Probate Clerk.

State of Arkansas,
County of Pulaski, ss.

I, C. P. Newton, Judge of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that W. S. Rogers, Esq., whose name is subscribed to the foregoing certificate, is the Clerk of the County and Probate Courts, duly elected, commissioned, qualified and acting, and under our laws the legal custodian of the records of said courts, and that he is the proper officer to make said certificate, and that said certificate is in due form of law and that his acts as such Clerk are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Judge of the County and Probate Courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) C. P. NEWTON,
(Seal) County and Probate Judge.

State of Arkansas,
County of Pulaski. ss.

I, W. S. Rogers, Clerk of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that C. P. Newton, whose name is subscribed to the foregoing certificate, is the Judge of the County and Probate Courts for Pulaski County, State of Arkansas, and that his acts as such are entitled to full faith and credit and that said certificate is in due form of law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) W. S. ROGERS,
County and Probate Clerk.

EXHIBIT No. 3.

UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION.

BE IT REMEMBERED, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 1st day of April, *Anno Domini*, One Thousand, Nine Hundred and Eighteen, at the United States Courtroom, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit: April 8th, 1918.

United States of America
vs. 5871
George Hild and A. Allen.

Comes the plaintiff by W. H. Martin, Esq., United States Attorney, and Ashley Cockrill, Esq., special assistant to the United States Attorney, and come the defendants by J. W. House and Geo. W. Hays, Esq., their attorneys, and come the Jury, to-wit: Mink Westbrook, R. C. Vance, C. C. Aycock, J. M. Baugh, M. W. Jordan, C. J. Hornor, George Melton, and S. W. Welburn, and the trial hereof not being concluded on yesterday, the same is now resumed; and the jury having heard all the evidence and argument of counsel and having been charged and instructed by the court, retired to consult of their verdict, and afterwards returned into court the following verdict: "We, the Jury, assess the value of the premises in controversy at the sum of $1,466.00.
(Signed) R. C. VANCE, Foreman."

It is therefore considered, ordered and adjudged that the United States of America pay to the defendants, George Hild and A. Allen, the said sum of One Thousand Four Hundred Sixty-six Dollars ($1,466.00), found as aforesaid as compensation for the right to appropriate for the uses and purposes of the United States of America the S. ½ of the Se. ¼ of the Se. ¼ of section 3, Township 2 North, Range 12 West of the Fifth Principal Meridian, Pulaski County, Arkansas, the property of the defendants.

And it is hereby further considered, ordered and adjudged that upon the payment of the said sum of One Thousand, Four Hundred Sixty-six Dollars all right, title and intrest in and to the said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon said property.

(Signed) JACOB TRIEBER, Judge.

May 10th, 1918. This judgment and costs satisfied in full.

J. W. HOUSE,
Attorney for Defendants.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION.

BE IT REMEMBERED, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 1st day of April, *Anno Domini*, One Thousand, Nine Hundred and Eighteen, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said court, the following proceedings were had, to-wit: April 9th, 1918.

United States of America
vs. 5872
R. L. Hanks, Laura Hanks, W. B. Worthen & Co., Agents; Gordon N. Peay, Trustee, and Holman Real Estate Company and Martin Lawrsen.

Comes the plaintiff by W. H. Martin, Esq., United States Attorney, and Ashley Cockrill, Esq., Special Assistant United States Attorney, and comes the defendants, R. L. Hanks, Laura Hanks and Martin Lawrsen, by Geo. W. Hays and J. W. House, Esq., their attorneys, and the defendants, W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, by Jno. F. Clifford, Esq., and the defendant, Holman Real Estate Company, by Verne McMillan, Esq., its attorney, and come the jury, to-wit: A. J. Allen, O. J. Harkey, S. C. Cassell, T. J. Y. Johnson, Will Campbell, Sam T. Scott, Dan Otts, U. M. Hughes, Louis Edrington, M. O. Dowd, W. H. Poynter, and J. J. Rankin; and the trial

hereof not being concluded on yesterday, the same is now resumed; and the jury having heard all the evidence and argument of counsel and having been charged and directed by the Court, returned into Court the following verdicts: "We, the jury, find the value of the lands in controversy in this cause, belonging to R. L. Hanks, to be $1,500.00, and the damages to his crop $400.00. Total, $1,900.00.

(Signed) SAM T. SCOTT, Foreman."

We, the jury, find the value of the lands in controversy in this cause belonging to Martin Lawrsen to be $2,000.00.

(Signed) SAM T. SCOTT, Foreman.

And it appearing to the Court that W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, have a lien upon the property in controversy herein for the sum of Four Hundred and Twelve Dollars and Eighteen Cents ($412.18), and that the Holman Real Estate Company also have a lien upon said property for the sum of One Hundred Twenty-eight Dollars and Fifty-six Cents ($128.56).

It is therefore considered, ordered and adjudged, that the said plaintiff, United States of America, do pay to the said defendants, W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, the sum of Four Hundred Twelve Dollars and Eighteen Cents ($412.18), and the Holman Real Estate Company the sum of One Hundred and Twenty-eight Dollars and Fifty-six Cents ($128.56), and R. L. Hanks and Laura Hanks the sum of One Thousand, Three Hundred, Fifty-nine Dollars and Twenty-six Cents ($1,359.26), aggregating the sum of One Thousand Nine Hundred Dollars found as aforesaid as compensation for the right to use and appropriate for the uses and purposes of the United States of America the Sw. ¼ of the Nw. ¼ of section 3, Township 2 North, Range 12 West, situated in Pulaski County, State of Arkansas, the property of the defendants, R. L. Hanks and Laura Hanks.

And it is further considered, ordered and adjudged that upon the payments of the said sum of One Thousand Nine Hundred Dollars ($1,900.00), all right, title and interest in and to said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon the said property.

It is further considered, ordered and adjudged that the said plaintiff, the United States of America, do pay to the defendant, Martin Lawrsen, the said sum of Two Thousand Dollars ($2,000.00), found as aforesaid, as compensation for the right to use and appropriate for the uses and purposes of the United States of America the Ne. fractional quarter of the Ne. ¼ of section 4, Township 2 North, Range 12 West, situated in Pulaski County, State of Arkansas, the property of the defendant, Martin Lawrsen.

And it is further considered, ordered and adjudged that upon the payment of the said sum of Two Thousand Dollars ($2,000.00), all of the right, title and interest in and to said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon the said property.

(Signed) JACOB TRIEBER, Judge.

Satisfied in full as to R. L. Hanks and Laura Hanks this April 9th, 1918.

(Signed) GEO. W. HAYS,
Attorney for Defendants.

Satisfied in full as to W. B. Worthen & Co., as agents, and Gordon N. Peay as trustee, this April 9th, 1918.

(Signed) J. H. CLIFFORD,
Attorney of Record.

Satisfied in full as to Holman Real Estate Company this April 9th, 1918.

(Signed) HOLMAN REAL ESTATE CO.,
By W. E. Livingston, Secretary-Treasurer.

Satisfied in full as to Martin Lawrsen, this April 9th, 1918.

(Signed) GEORGE W. HAYS,
Attorney for Defendant.

Attest:
Sid B. Redding, Clerk,
By W. P. Feild, D. C.

No. 50.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.
In case No. 5871-L.

Of United States of America, against John Hild et al.
In the District Court of said United States,
in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Two Thousand Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 50.

Deposited this 25th day of October, A. D. Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Two Thousand Dollars, as a fund. $2,000.00.

No. 51.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.
In case No. 5872-L.

Of United States of America, against R. L. Hanks, et al.
In the District Court of said United States,
in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Three Thousand Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 51.

Deposited this 25th day of October, A. D., Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Three Thousand Dollars, as a fund. $3,000.00.

No. 52.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.

In case No. 5873-L.

Of the United States of America, against Martin Lawrsen et al..
In the District Court of said United States, in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Three Thousand Three Hundred Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 52.

Deposited this 25th day of October, A. D., Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Three Thousand Three Hundred Dollars, as a fund. $3,300.00.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION.

I, SID B. REDDING, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writing annexed to this certificate are true, correct and compared copies of the original remaining of record in my office, at Little Rock, Arkansas, of the judgments and Registry Record showing the payment of the fund into the Registry of the Court, in cases of United States vs. Hild et al., No. 5871-L.; United States vs. Hanks et al., No. 5872-L., and United States vs. Lawrsen et al., No. 5873-L., Cases Nos. 5872-L. and 5873-L., having been consolidated for trial.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court, this 4th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-eight, and of the Independence of the United States of America, the One Hundred and Fifty-third.

SID B. REDDING, Clerk.
By W. P. Feild, D. C.

Attest:

EXHIBIT No. 4.

CERTIFICATE.

State of Arkansas,
County of Pulaski, ss.

I, W. S. Rogers, Clerk of the County Court of Pulaski County, Arkansas, do hereby certify that all articles of incorporation, and corporation annual reports located in Pulaski County, Arkansas, are filed and recorded in my office.

That Record Book "W," Pages 77 to 85, referred to in the annual report filed by the Army Post Development Company on the 9th day of June, 1922, a certified copy of which this certificate is attached to, shows that a list of stockholders, and among other stockholders in said list appears the name of Rose, Hemingway, Cantrell, Loughborough & Miles, as being subscribers to Sixty shares of the capital stock of the Army Post Development Company.

Given under my hand and seal of said court on this, the fourth day of October, 1928.

(Signed) W. S. ROGERS, Clerk.

(Seal) By Fred Adair, D. C.

EXHIBIT No. 5.

AFFIDAVIT OF W. S. HOLT.

State of Arkansas,
County of Pulaski.

I, W. S. Holt, on oath, state I am a citizen and resident of Pulaski County, Arkansas, and have been for more than forty years. During the time I have resided in Pulaski County, Arkansas, I have been engaged in the real estate and abstract business, and am familiar with all the lands comprising the Camp Pike military reservation. Some time in 1917, just after the United States entered the World War, there was organized an Arkansas corporation known as the Army Post Development Company, which was organized for the purpose of acquiring title to land in Pulaski County, Arkansas, so the same could be donated to the United States as an inducement to locate at or near Little Rock, Pulaski County, Arkansas, a military camp or cantonment for the purpose of training soldiers for the World War.

I purchased for Army Post Development Company the title to almost all of the land donated to the United States comprising the Camp Pike military reservation. Three or four tracts of land were acquired by instituting condemnation proceedings in order to clear the titles. I know Army Post Development Company paid for all of the lands purchased or condemned. About 2,500 acres, including that condemned, was donated to the United States, and it was on this particular land which was donated to the United States that all of its buildings on the Camp Pike military reservation were constructed. After the war was over the United States acquired title to some land adjacent to and adjoining the lands donated to it by the Army Post Development Company. These after-acquired tracts were purchased and paid for by the United States. However, none of the buildings erected by the United States in connection with Camp Pike were constructed on the land bought and paid for by the United States, as this land was not purchased until after the war was over.

W. S. HOLT.

Subscribed and sworn to before me this 4th day of October, 1928. GRACE LASSITER,
(Seal) Notary Public, State of Arkansas.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 33.

SURPLUS TRADING COMPANY.....*Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error*

BRIEF FOR DEFENDANT IN ERROR

JURISDICTION

This action comes to the Supreme Court of the United States on a writ of error. It was determined adversely to the plaintiff in error by the Supreme Court of Arkansas. The style of the action in the court of last resort in Arkansas is Haynie v. Surplus Trading Company. It is reported in 174 Ark., 507, 297 S. W. 822.

Jurisdiction of the Supreme Court of the United States in this action is predicated upon two false propositions—one of fact and the other of law. The Federal question raised by plaintiff in error is purely imaginary. Plaintiff in error has invoked the jurisdiction of this Court solely on the ground that the property sought to be taxed was located within the Camp Pike military reservation on May 1, 1922, the date claimed by it to be the legal date for assessing taxes. The undisputed facts show the assessment was made on June 6, 1922.

Under the tax laws of Arkansas the assessment was properly made on June 6, 1922.

Plaintiff in error concedes all of the merchandise was located in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation on June 6, 1922, when the assessment was actually made.

Plaintiff in error challenged the validity of the assessment in question in the Supreme Court of Arkansas. It was contended in the State court the assessment was invalid because, among other things, it was made on June 6, 1922.

It is now insisted here that because a part of the property sought to be taxed was on May 1, 1922, located on the Camp Pike military reservation, all of it is, therefore, exempt from taxation.

Plaintiff in error concedes it was the owner of all the personal property sought to be taxed on May 1, 1922. It also conces more than one-fourth of the merchandise was, on May 1, 1922, located in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

In contending here May 1, 1922, was "tax day" for the assessment of personal property in Arkansas, plaintiff relies upon the terms of Act 147, Acts of Arkansas for 1919. This is a complete reversal of the position assumed by plaintiff in error in the Supreme Court of Arkansas, as it there contended Act 147 of 1919 had been repealed by the provisions of a later Act. (R. 93.)

The contention of plaintiff in error that the assessment was not legally made in the manner and time provided for by the tax laws of Arkansas was resolved against it by the State court. (R. 92.) As the Supreme Court of Arkansas has held the assessment was legally made in the manner and time provided for by the tax laws of Arkansas, the plaintiff in error is not entitled to a review, on this issue, by the Supreme Court of the United States.

STATEMENT

The principal question presented by the assignment of errors challenges the power of the State of Arkansas to tax

personal property owned by plaintiff in error, a mercantile firm, and claimed to have been located, at assessing time, within the boundaries of the United States military reservation at Camp Pike, Arkansas.

Plaintiff in error contends the taxation of its property by the State of Arkansas conflicts and interferes with the constitutional power of the Congress to exercise exclusive legislation over the Camp Pike military reservation.

The United States did not acquire the particular tract of land included in the Camp Pike military reservation, and which is material to the issue here, in such manner as to vest in the Congress power to exercise exculsive legislation over it.

Although the power to exercise exclusive legislation over the reservation may be conceded; yet, defendant in error contends the local taxation by the State of Arkansas, and her subordinate taxing agencies, of personal property of others than the United States, is not an interference with the exercise of the exclusive legislative power by the Congress over the lands comprising the reservation.

The tax sought to be collected is not one levied upon property owned by the United States nor upon property used by the United States. The tax does not in any manner burden or interfere with the operation or execution of the powers vested in the United States. The tax here is simply a tax against the personal property of plaintiff in error, a mercantile firm, in common with all other property in the State of Arkansas of a similar character.

The Camp Pike military reservation is a tract of land lying within the boundaries of Pulaski County, Arkansas. The United States acquired the land constituting the reservation in 1917, at the time the United States entered the World War, or shortly thereafter.

The United States acquired the Camp Pike military reservation for the purpose of using it during the World War as an army cantonment for training soldiers. Temporary buildings were erected thereon for use during the World War. No permanent buildings were erected on the reservation.

The United States did not pay for any of the tracts of

land which are included in the Camp Pike military reservation, and material to a determination of the issues here. The particular tract of land mentioned here was donated to the United States by public-spirited citizens of the State of Arkansas. A corporation known as Army Post Development Company was organized. It purchased lands from the owners when it was able to agree with the owners on the price to be paid.

Where an agreement as to the price to be paid for the lands could not be reached, the United States exercised the right of eminent domain and instituted condemnation proceedings against the land. The corporation also furnished the money required to pay for the lands condemned.

The land was accepted for the United States by the Secretary of War under the provisions of Section One (1) of the Army Appropriation Act of August 29, 1916, Ch. 418, now cited as 39 Stat. L. 623. No money was appropriated by the Congress nor expended by the War Department for the purchase of the land included in the Camp Pike military reservation and which is material to the issues here. This is well known. Counsel for plaintiff in error had knowledge of the manner in which the United States acquired title to the land in question. The law firm of which counsel for plaintiff in error are members was a stockholder in the Arkansas corporation known as Army Post Development Company, which bought this land from the individual owners and donated it to the United States.

The land in question and which is material to the issues here, was not acquired by the United States *with the consent of the State of Arkansas given at the time of its acquisition.* By an act of the General Assembly of Arkansas in 1903 the State of Arkansas gave her consent to the purchase by the United States of any land made before that time, or to be made thereafter, of any site or ground for the erection of any armory, arsenal, fort, or other like public use. The State of Arkansas in the 1903 Act of Cession specifically released and relinquished her right to tax any such site, ground or real estate, and all improvements thereon, or thereafter erected thereon, only, during the time the United States should be and remain the owner thereof.

The right to tax the personal property of others than the United States located on such lands, however, was not released.

The act of cession also provided the grant of jurisdiction over such sites to the United States should not prevent the execution of any process of the State of Arkansas, civil or criminal, upon any person who might be upon said premises. (Act 180, Arkansas Laws, 1903, p. 346. Also cited as Sections 4564-4565 of Crawford & Moses' Digest of the Statutes of Arkansas, 1921.)

On May 15, 1922, the Secretary of War of the United States granted a revocable license to the State of Arkansas to occupy and use all of the real estate, buildings and utilities on the Camp Pike military reservation in connection with the organization and training of the National Guard of Arkansas. (R. 79-81). This license remained in force until November 30, 1922, when a similar license was granted. (R. 82-83.) The license of November 30, 1922, is still in force.

The State of Arkansas has complete control of the Camp Pike military reservation in all matters, except the military use of it by the United States cannot be impaired.

In the early part of 1922 the War Department of the United States had located at Camp Pike, Arkansas, a military reservation of the United States, a large quantity of surplus army property and supplies. The surplus property consisted of woolen army blankets, shoes, woolen shirts, and various other materials and supplies. The most valuable lot of property was a lot of about 90,000 woolen army blankets, worth about $2.75 each, or approximately $247,500.00.

The War Department asked bids for all the surplus property located at Camp Pike early in 1922. The date of the sale was set for March 31, 1922. Surplus Trading Company, the plaintiff in error, was the high bidder at this sale, offering $338,000 for all the property located at Camp Pike. The property was awarded to Surplus Trading Company, as the highest bidder, but at the request of a delegation of Arkansas citizens the sale was not consummated and the Secretary of War reopened the bidding for the surplus property at Camp Pike.

On April 21, 1922, the large lot of woolen army blankets at Camp Pike was sold to Surplus Trading Company for $138,000.

The next day, on April 22, 1922, Surplus Trading Company began the removal of the large lot of woolen blankets from Camp Pike. It is conceded by plaintiff in error that on May 8, 1922, sixteen (16) days later, the last of the large lot of blankets in question had been removed from Camp Pike. A few of the blankets were shipped from Camp Pike to various points in the United States, including points within the State of Arkansas, to be used as samples.

It is undisputed that practically all of the large lot of blankets was removed from Camp Pike to the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, in automobile trucks, to be stored pending their sale and shipment in small lots to prospective buyers.

At the time the movement of the blankets started from Camp Pike to the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, it was not known to whom nor where the blankets would eventually be shipped. Many of the blankets were sold to merchants in Little Rock, Arkansas, and delivered from the Terminal Warehouse to Little Rock merchants. Shipments of the blankets, and other merchandise owned and stored by Surplus Trading Company, in the Terminal Warehouse, continued throughout the year 1922.

On May 8, 1922, the Secretary of War sold the balance of the surplus property at Camp Pike to A. D. Cohn, as trustee, for the Camp Pike Honorary Commission, for approximately $140,000.

The Camp Pike Honorary Commission was an unincorporated body of citizens of Arkansas voluntarily organized to buy the surplus property at Camp Pike and resell it at a profit. It was intended to use the profits derived from the resale of the surplus property to erect improvements upon and beautify a part of the Camp Pike military reservation to be used for holding the annual encampments of the Arkansas National Guard.

When the sale of the balance of the surplus property at Camp Pike was made to A. D. Cohn, as trustee, the Camp

Pike Honorary Commission was without funds. Surplus Trading Company, the plaintiff in error, advanced the money to pay the War Department approximately $140,000 for the balance of the property sold to Camp Pike Honorary Commission.

The consideration which induced Surplus Trading Company to furnish the money to pay for the balance of the surplus property sold to the Camp Pike Honorary Commission was that it was agreed Surplus Trading Company should organize and manage the selling and distribution of the surplus property and supplies. Surplus Trading Company was to receive the proceeds of all sales until it had been repaid in full for the $140,000 advanced by it. After this amount had been repaid Surplus Trading Company from the proceeds of the sales, plaintiff in error was to receive one-third of all net profits realized up to $100,000 and one-half of any profits in excess of $100,000.

It was at first contemplated the surplus property at Camp Pike awarded to the Camp Pike Honorary Commission would be sold at public auction sales.

However, before the public auction sales started, several private sales were made of large quantities of the most desirable property located at Camp Pike. One of these sales consisted of 40,000 woolen shirts at a price of $1.40 per shirt, or a total of $56,000.

The amount of the purchase price of the shirts was allowed as a credit by Surplus Trading Company, plaintiff in error, on the $140,000 advanced by it to pay the War Department for the surplus property sold to Camp Pike Honorary Commission.

Plaintiff in error now claims the shirts were owned by Kalter-Cerf Mercantile Company, one of the partners of Surplus Trading Company. The shirts were also removed from Camp Pike and stored in the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, where the large lot of blankets was stored. The shirts were removed from Camp Pike to the Terminal Warehouse prior to the date the assessment in question was made.

From time to time in 1922, as the auction sales were held, Surplus Trading Company bought various other lots

of merchandise and stored the same in the Terminal Warehouse, in addition to the blankets.

Surplus Trading Company and the various persons, firms and corporations composing that mercantile partnership, did not assess their property for taxation for the year 1922. On June 6, 1922, after the time for voluntary assessments had expired, the Assessor of Pulaski County, Arkansas, made an assessment against Surplus Trading Company for $100,000. The basis of this assessment was goods and merchandise stored in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and owned by plaintiff in error, Surplus Trading Company. It is conceded by plaintiff in error that the merchandise, when assessed, was actually located in the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

This assessment against Surplus Trading Company was made and included in the personal property assessments for the year 1922, which were filed with the county clerk of Pulaski County, Arkansas, by the Assessor on September 2, 1922, as required by law.

After the personal property assessment books were filed with the County Clerk, the Assessor of Pulaski County, Arkansas, made a separate assessment against the plaintiff in error, of $35,000 for moneys on deposit in a bank in Little Rock, Pulaski County, Arkansas.

Surplus Trading Company also failed to make any assessment of its taxes in Pulaski County, Arkansas, for the year 1923, and the assessor of Pulaski County, Arkansas, made an assessment against it for moneys deposited in a Little Rock, Arkansas, bank. The 1923 assessment was held invalid by the Arkansas courts. Neither of the assessments relating to moneys on deposit in the Little Rock, Arkansas, banks are involved here. The question here is only as to the 1922 merchandise assessment.

The validity of the merchandise assessment in question was challenged by plaintiff in error for the first time in this action. No objection was made to the assessment by plaintiff in error before the Board of Equalization for Pulaski County, Arkansas.

Upon failure of the plaintiff in error to pay the tax levied, this action was filed in the Pulaski County, Arkansas, Chancery Court by the predecessor in office of the defendant in error. It was there decided adversely to the predecessor in office of the defendant in error. However, on appeal the Supreme Court of Arkansas reversed the decree of the trial court in part and affirmed it in part. The 1922 assessment was upheld. The 1923 assessment was declared invalid because the moneys deposited in the Little Rock, Arkansas, banks was deposited in the name of the Camp Pike Honorary Commission.

The Supreme Court of Arkansas reversed the decree of the Pulaski Chancery Court and remanded the cause to the trial court with directions to the trial court to allow the defendant in error to recover against plaintiff in error the amount of the tax based upon the assessment made against it for the year 1922, with statutory penalties. (R. 95.) Without awaiting the entry of the decree in the Pulaski County, Arkansas, Chancery Court, as provided by the decree of the Supreme Court of Arkansas, plaintiff in error applied for and obtained a writ of error to the Supreme Court of the United States.

SUMMARY OF ARGUMENT.

I.

The merchandise in question, when assessed, was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not within the boundaries of the Camp Pike military reservation.

The uncontroverted facts here show the assessment in question was made on June 6, 1922. (R. 41, 42.)

The assessment made on June 6, 1922, was valid under the tax laws of Arkansas. Plaintiff in error bought the blankets from the War Department of the United States on April 21, 1922, and it concedes that at all times thereafter it was the owner of the same. There is no dispute that on May 1, 1922, more than one-fourth of the blankets were stored and located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and on June 6, 1922, when blankets were assessed

for taxation, all of the blankets were also in the Terminal Warehouse. The blankets were removed from Camp Pike military reservation to the Terminal Warehouse beginning April 22, 1922, and before May 8, 1922, all of the blankets had been stored in the Terminal Warehouse. (R. 50, 51, 52, 53, 54, 55, 62, 63, 64, 74.)

II.

Plaintiff in error has not been denied due process of law. It is conceded by plaintiff in error at least 21,235 of the blankets owned by it were located in the Terminal Warehouse, in the City of Little Rock, Pulaski County, Arkansas, on May 1, 1922, the date claimed by plaintiff in error to be "tax day" under the laws of Arkansas. It is not contended the blankets located in the Terminal Warehouse were exempt from taxation. Although plaintiff in error concedes these facts, it did not assess the blankets stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, for taxation. It was the duty of plaintiff in error to assess its property. *Beal-Doyle Dry Goods Co. v. Beller*, 105 Ark., 370, 150 S. W. 1033. Failing to assess its property, plaintiff in error cannot now be heard to question the valuation placed on it by proper authorities. If plaintiff in error desired to question valuation it should have applied to the Board of Equalization for Pulaski County, as required by Act 477 of Acts of Arkansas for 1919. (See Appendix.) Failing to pursue this remedy, the courts are powerless to give plaintiff in error any relief. *Clay County v. Bank of Knobel*, 105 Ark., 450, 151 S. W. 1013; *State v. Little*, 94 Ark., 217, 126 S. W. 713; *Clay County v. Brown Lumber Co.*, 90 Ark., 413, 119 S. W. 251.

It is necessary for Supreme Court of United States to review facts to determine if blankets were located on Camp Pike military reservation when assessed. Plaintiff in error contends the tax, if enforced, will constitute a taking of its property without due process of law. Therefore, the location of the blankets is material to determine if plaintiff in error will be denied due process of law by upholding tax in question. If, as is insisted by defendant in error and shown by the undisputed facts, the blankets were located in the Terminal Warehouse in the City of Little Rock, Arkan-

sas, when assessed, no Federal questions exists here, and, of course, the Supreme Court of the United States is without jurisdiction to determine this cause. The question of fact as to the location of the blankets when assessed is properly reviewable here under the rule stated in cases of *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389; *Kansas City Southern R. Co. v. C. H. Albers Com. Co.*, 223 U. S. 573, and *State of Washington ex rel. Oregon R. & N. Co. v. Fairchild et al.*, 224 U. S. 510.

III.

The State of Arkansas and her subordinate taxing agencies may tax merchandise of plaintiff in error, although it was located on Camp Pike military reservation when assessed. However, defendant in error contends merchandise was not within Camp Pike military reservation when assessed, but, on the contrary, was stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

The land in question here comprising Camp Pike military reservation was not acquired by United States in manner contemplated by Section 8, Article 1, sub. 17, of Constitution of the United States. *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525. Therefore, jurisdiction of the United States over Camp Pike military reservation depends upon provisions of cession act of General Assembly of Arkansas, approved April 29, 1903. *Palmer v. Barrett*, 162 U. S. 399; 39 Cyc. 731; 26 R. C. L., 1442. The cession act of Arkansas impliedly reserved the right to State of Arkansas to tax privately owned personal property on Camp Pike military reservation. 36 Cyc. 1122; 25 R. C. L. 981; *Haynie v. Surplus Trading Co.*, 174 Ark., 507, 297, S. W. 822.

The cession act granted a benefit and acquisition of land for Camp Pike military reservation by United States without dissent as to terms shows United States intended to acquire and use lands under conditions imposed by cession act. *Fort Leavenworth R. Co. v. Lowe, supra.*

The land in question and where blankets were stored when bought by plaintiff in error, were not actually purchased by United States, but were donated by public-spirited citizens of Arkansas.

The word "purchase," used in the Federal Constitution, means only acquisition by actual purchase. *Fort Leavenworth R. Co. v. Lowe, supra.*

No appropriation was ever made by Congress to pay for the land in question here, and War Department did not expend any money for the same. Although agreed statement of facts speaks of acquisition of lands by United States as by "purchase," this must be construed in the light of the legislation of Congress, which shows no money was appropriated or paid for the land in question. Then, too, a stipulation as to an alleged fact will not be construed so as to allow one to escape taxation when the legislation of Congress shows the fact did not exist. *Utah & N. Ry. Co. v. Fisher*, 116 U. S. 28.

Tax exemptions are never lightly to be inferred. *Heiner v. Colonial Trust Co.*, 275 U. S. 232. A State may tax personal property situated on a government reservation within its limits and not belonging to the United States or otherwise exempt. 26 R. C. L., 100; *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588; *Foster v. Pryor*, 189 U. S. 325; *Montana Catholic Missions v. Missoula County*, 200 U. S. 118; *Cassels v. Wilder*, 23 Haw., 61; *Rice v. Hammonds*, 19 Okla., 419, 91 Pac. 698; *County of Cherry v. Thacher*, 32 Neb., 350, 49 N. W. 351; *Nikis v. Commonwealth*, 131 S. E. 236, 46 A. L. R. 219 (Virginia); *Cosier v. McMillan*, 22 Mont., 484, 56 Pac. 965; *Noble v. Amoretti*, 11 Wyo., 230, 71 Pac. 879; *Oscar Daniels Co. v. City of Sault Ste. Marie*, 175 N. W. 160 (Michigan), and *ex parte Gaines*, 56 Ark., 227, 19 S. W. 602.

I.

THE MERCHANDISE WHICH WAS THE SUBJECT OF THE ASSESSMENT WAS LOCATED AT TERMINAL WAREHOUSE, IN CITY OF LITTLE ROCK, PULASKI COUNTY, ARKANSAS—NOT ON CAMP PIKE MILITARY RESERVATION.

For its principal assignment of error plaintiff in error contends the State of Arkansas, and her subordinate taxing agencies, are without authority to tax personal property of plaintiff in error. This assignment of error is grounded upon the false proposition that the merchandise in question was located within the boundaries of Camp Pike military reservation and was, for that reason, outside the taxing jurisdiction of Pulaski County, Arkansas. When this assignment of error is tested by the undisputed facts of this case one is convinced it is untenable and is not supported by fact, reason or authority.

Plaintiff in error concedes it purchased the merchandise in question on April 21, 1922, and was at all times thereafter the owner of the same. It admits it was the owner of the merchandise on May 1, 1922, and also, on that date, more than one-fourth of the blankets in question were located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

The undisputed facts show the assessment in question was made on June 6, 1922, and, on the date when the assessment was actually made, the plaintiff in error concedes all of the blankets, as well as the other merchandise, which was made the basis of the assessment was, in fact, stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation. The undisputed proof here shows all of the property assessed for taxation was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and was not at Camp Pike when assessed.

The assessment was not based upon any property located within Camp Pike. This is plainly shown by the testimony of W. T. Dorough, County Assessor of Pulaski County, Arkansas. In answer to a question on cross-examination, he stated:

"Q. Was your assessment based on the property that Surplus Trading Company bought at Camp Pike?"

"A. Yes, sir." (R. 48.)

It is uncontroverted all of the property which was the subject of the assessment was stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas. It was there for more than 30 days before the assessment was made on June 6, 1922. The Assessor asked S. J. Beauchamp, the manager of the Terminal Warehouse, for information as to the value of the property before making the assessment and he refused to give the Assessor any information as to its value. (R. 47, 48.)

The merchandise was at Camp Pike when it was bought by Surplus Trading Company from the War Department of the United States. But, immediately after its purchase by Surplus Trading Company on April 21, 1922, it was removed to the Terminal Warehouse.

The removal of the merchandise from Camp Pike to the Terminal Warehouse was completed before May 8, 1922.

All of the testimony offered by plaintiff in error plainly shows the merchandise was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, at assessing time. There was a reason for the removal of the merchandise from Camp Pike. Max Kalter, the managing officer of the Surplus Trading Company, on this point, in his direct examinaton says:

"Q. Mr. Kalter, about what date was that? I ask you this question because the shipping ticket relates, I believe, that the contract is dated April 22, 1922.

"A. These negotiations were continued from about the 10th of April until the 21st of April. I immediately wired our representative at Camp Pike to have these goods removed from Camp Pike and put into the Terminal Warehouse for the purpose of re-shipping them from there. My reason for having them taken to the Terminal Warehouse were, firstly, that the goods could not be shipped from Camp Pike in less than carload lots; secondly, we thought the insurance rate at Camp Pike was prohibitive, and thirdly, and perhaps the most important reason of all was that having once

suffered through the Arkansas influence in Washington and having had one contract suspended, I was afraid that when the people in Arkansas found out that blankets which were undoubtedly the choicest portion of the materials in this Camp had been sold, they would perhaps take steps to block me, and I felt that if they were out of the Government warehouse, they would not be able to do any such thing.

"Q. Mr. Kalter, on the shipping ticket to which you have just referred there appears the notation in the space for the date 'Shipped or delivered 5-8-22.' What is the significance of that notation?

"A. That is the date that the shipment was completed." (R. 74.)

Ben Sagor, who was a witness for plaintiff in error, and its manager in Arkansas, and the man who supervised the removal of the merchandise from Camp Pike to the Terminal Warehouse, in his direct examination, on this point, says:

"Q. Did you receive a shipping ticket from the properly authorized officer of the War Department to the Surplus Trading Company?

"A. Yes, sir.

"Q. I show you what purports to be a shipping ticket from the property officer, Camp Pike, Arkansas, dated May 8, 1922. Will you state whether that is the shipping ticket covering this lot of blankets?

"A. It is. * * * *

* * * * * *

"Q. Mr. Sagor, will you attach this shipping ticket to your deposition as an exhibit thereto?

"A. I will." (R. 59.)

The shipping ticket is set forth in full at R. 59, 60.

"Q. Mr. Sagor, this shipping ticket is dated as I said, May 8, 1922, that being the date of the delivery to the Surplus Trading Company of this property. Is that correct?

"A. Yes, sir. (R. 60.)

* * * * * * *

"Q. Mr. Sagor, while you were in Little Rock handling the disposal of goods in connection with the auction sales for the Honorary Commission did you keep an account of the movement and disposition of this lot of blankets of which we were speaking?

"A. I did. * * * *

* * * * * * *

"Q. Do your records show the dates of each load of blankets together with the number of cases in each load, and the total blankets in each load of this merchandise received by the Terminal Warehouse in Little Rock, Arkansas, from Camp Pike?

"A. They show the exact number of cases, or bales, whichever the case was.

* * * * * * *

"Q. Who kept this record, Mr. Sagor?

"A. I did.

"Q. Are all of the entries in this record in your own handwriting?

"A. Yes, sir.

"Q. Were they made contemporaneously with the items which they are proposed to note?

"A. They are.

"Q. Are they correct?

"A. Yes.

"Q. Will you introduce photostatic copies of the pages 2, 10, 11, 20, 22, 23, 24, 40, 41, 42, 50, 51, 60 and 61, of your ledger and mark them as exhibits to your deposition?

"A. Yes, sir." (R. 61.)

Photo-static copies of pages 10, 20, 40, 50 and 60 of the ledger kept by Mr. Sagor are included in the printed transcript of the record and are pp. 62, 63, 64 of the record.

These pages show the dates the merchandise was removed from Camp Pike to the Terminal Warehouse. The removal of this merchandise started from Camp Pike on April 22, 1922 and all of the merchandise was removed from Camp Pike and stored in the Terminal Warehouse on May 8, 1922, according to the record kept by Mr. Sagor.

The copy of the 1922 assessment list made by the Assessor of Pulaski County against Surplus Trading Company for the merchandise plainly shows the assessment was made on June 6, 1922. (R. 41, 42.)

The testimony of the witnesses, Henry Moore, (R. 50, 51, 52, 53), and of W. O. Koen, (R. 53, 54, 55), also shows the merchandise was not on the Camp Pike Military Reservation when assessed.

II.

DUE PROCESS OF LAW CLAUSE NOT VIOLATED.

It is contended by plaintiff in error the taxing of the merchandise in question by the State of Arkansas, and her subordinate taxing agencies, constitutes a violation of the due process of law clause of the Federal Constitution.

This contention is not supported either by fact or law. Plaintiff in error relies upon two false propositions—one of fact, the other of law—to sustain the argument it makes on this point.

The false proposition of fact upon which plaintiff grounds its argument on this point is the merchandise owned by it was located on Camp Pike military reservation and not at Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

The erroneous proposition of law advanced by plaintiff in error to support this contenton is the land comprising Camp Pike military reservation is outside the jurisdiction of the State of Arkansas, and her subordinate taxing agencies. Defendant in error has elsewhere in this brief plainly pointed out the falsity of each proposition.

Plaintiff in error predicates this contention upon the statement that the merchandise sought to be taxed was located outside the taxing jurisdiction of the State of Arkansas. Of course, if the merchandise sought to be taxed was not outside the taxing jurisdiction of the State of Arkansas then this contention of plaintiff in error must fail. The truth or falsity of this premise must be first determined by the Supreme Court of the United States before it will be able to decide whether plaintiff in error was denied the protection of the due process of law clause of the Federal Constitution by the decree of the Supreme Court of Arkansas.

The contention of plaintiff in error that the tax, if enforced, would constitute a taking of property without due process of law makes it necessary for the Supreme Court of the United States to review the facts of this case.

As to whether the merchandise was located within the boundaries of Camp Pike military reservation or at the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, at the time of assessment is a question of fact. Whether the merchandise was located outside the

taxing jurisdiction of the State of Arkansas, and her subordinate taxing agencies, is a mixed question of fact and law. Both questions must be considered in determining whether plaintiff in error has been denied the protection of the due process clause.

Of course, the Federal right claimed to have been denied plaintiff in error is the denial of due process of law. The conclusion of law as to the Federal right claimed to have been denied and the findings of fact are so intermingled and interdependent as to cause it to be necessary to consider the latter in order to pass upon the former.

Defendant in error admits the rule is well settled by a long line of decisions of the Supreme Court of the United States that the decision of a state court upon a question of fact ordinarily cannot be made the subject of inquiry by the United States Supreme Court. However, to this general rule there are two equally well-settled exceptions, to wit:

(1) Where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; and

(2) Where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Aetna Life Ins. Co. v. Dunken, 266 U. S., 389.

This case comes within the second exception.

Kansas City Southern R. Co. v. C. H. Albers Comm. Co., 223 U. S., 573.

In determining whether the due process of law clause of the Federal Constitution had been violated the Supreme Court of the United States has held it had the power to review the facts as shown by the entire record.

State of Washington, ex rel. Oregon R. & N. Co., v. H. A. Fairchild, et al., 224 U. S., 510.

The question at issue in the cited case was whether, as a matter of law, the order of the Oregon Railroad Commission, requiring the plaintiff in error to make track connections with competing carriers, on the facts proved, was so unreasonable as to amount to taking of property without due process of law. As to the power of the Supreme Court of the United States to review the facts in the record, it was said:

*"This necessitates an examination of the evidence, not for the purpose of passing on conflicts in the testimony, or of deciding upon pure questions of fact, but, as said in Kansas City Southern R. Co. v. C. H. Albers Commission Co., 223 U. S. 591, from an inspection of the 'entire record, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter.' Citing cases. * * * Here the question presented is whether, as matter of law, the facts proved show the existence of such public necessity as authorizes a taking of property."*

Plaintiff in error says if it is required to pay the tax here that, as a matter of law, the facts proved show it would constitute a taking of its property without due process of law. Defendant in error insists this question makes it necessary for the Supreme Court of the United States to review the facts properly incorporated in the record. This necessarily requires an inquiry to ascertain where the merchandise in question was located—whether on Camp Pike military reservation or at Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas. The undisputed facts of this record show the merchandise was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation, as contended by plaintiff in error. The Federal question asserted to be involved in this case as to the power of the State of Arkansas to tax personal property of third persons, located on a military reservation of the United States is based solely upon the theory that the merchandise was located on Camp Pike military reservation.

There will not be any Federal question in this case when the facts of this record are examined and plainly understood. When this fact is determined it is insisted by the defendant in error the jurisdiction of the Supreme Court of the United States will fail.

Defendant in error concedes the State of Arkansas is without authority to tax property located or existing per-

manently beyond its limits. But the facts in this case do not justify the conclusion that the merchandise, which was the subject of the assessment in question, was located permanently beyond the limits of the State of Arkansas.

The undisputed facts of this record show that, on April 21, 1922, plaintiff in error purchased from the United States 87,143 woolen army blankets, then situated on the Camp Pike military reservation. Plaintiff in error paid $138,492.65 for these blankets. On April 22, 1922, the removal of this large lot of blankets was started from Camp Pike military reservation, and prior to May 8, 1922, all of the blankets were removed from the reservation. Practically all of the blankets were removed from Camp Pike and stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error seeks to invoke the jurisdiction of the Supreme Court of the United States for the reason, as it claims, the merchandise, which was the basis of the assessment in question, was located within the Camp Pike military reservation on the legal date for assessing taxes in Arkansas. It is not disputed that plaintiff in error was the owner of all the merchandise on May 1, 1922, the date it claims was "tax day" in Arkansas. It is conceded by plaintiff in error that all of the merchandise was not located on the Camp Pike military reservation on May 1, 1922, but it admits that more than one-fourth of the merchandise was located on that date in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error concedes on May 1, 1922, there was, at least 21,235 of the blankets owned by it located at the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error does not contend the blankets admitted by it to be in the Terminal Warehouse on May 1, 1922, were exempt from taxation. It cannot be doubted the blankets located in the Terminal Warehouse on May 1, 1922, were subject to assessment. Although plaintiff in error was the owner of the blankets stored in the Terminal Warehouse on May 1, 1922, it did not make an assessment of the same and did not intend to make an assessment.

Plaintiff in error was charged with a knowledge of the tax laws of Arkansas.

It was the duty of plaintiff in error to assess its property in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Beal-Doyle Dry Goods Co. v. Beller, 105, Ark., 370, 150 S. W. 1033.

For the first time plaintiff in error objects to the assessment of its property in this action. It did not question the assessment for 1922 before the Board of Equalization of Pulaski County, Arkansas, as required by Act 477 of the General Acts of Arkansas for 1919; pp. 348-353 (See Appendix).

Having failed to assess its property, plaintiff in error can not now be heard to object to the assessment made by the proper authorities. The valuation placed upon the property by the Assessor of Pulaski County, Arkansas, was $100,000. If plaintiff in error thought this valuation was excessive it should have pursued the remedy provided for its relief under the statute.

Failing to pursue this remedy the courts cannot give plaintiff in error any relief.

Clay County v. Bank of Knobel, 105 Ark., 450: 151 S. W. 1013.

State v. Little, 94 Ark., 217; 126 S. W. 713.

Clay County v. Brown Lumber Co., 90 Ark., 413, 119 S. W. 251.

III.

STATE OF ARKANSAS MAY TAX MERCHANDISE OF PLAINTIFF IN ERROR, THOUGH IT WAS LOCATED ON U. S. RESERVATION.

But if it should be determined the merchandise of plaintiff in error, or any part of it, against which the assessment was made, was located on Camp Pike military reservation, which is not conceded by defendant in error, it would still be subject to taxation.

In order to have exclusive jurisdiction under Section 8, Article 1, the United States must have acquired the land by purchase, with consent of the State, and for one of the purposes specified, and the word *purchase*, used in this clause,

means only acquisition by *actual purchase*. Also land acquired in any other way than under Section 8, Article 1, is still subject to the State, except governmental use of it cannot be impaired; and in such case the State may cede the lands with any conditions which do not impair the governmental use contemplated and the laws of the State still retain their full force, except where inconsistent with the laws of the United States, until abrogated by the United States.

39 Cyc., 731.
26 R. C. L., 1442.

On this point the Supreme Court of the United States has said:

> "Where, therefore, *lands* are *acquired in any other way* by the United States within the limits of a State *than by purchase with her consent*, they will hold the land subject to this qualification; that if upon them forts, arsenals or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.*
>
> "As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission in the Union. It not being a case where exclusive legislative authority is vested by the Constitu-

> tion of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post."
>
> *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, at p. 539.

The word *"purchase"* used in the clause of the Federal Constitution under consideration means only acquisition by *actual purchase*. This was the holding in *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, where the constitutional provision relied upon by plaintiff in error here was strictly construed. It was held in the Lowe case, *supra*, that the word "purchase," as used in the clause of the Constitution involved here, has not the general technical meaning attached to it at common law as including any acquisition of lands by some other way than such actual purchase, and that, if the United States acquires land by direct cession from a State of its own land, as distinguished from a purchase by consent, it may be upon such conditions as the State may determine to impose, not inconsistent with the free and effective use of such land for the purposes intended. Applying this construction, the State of Kansas having ceded a part of its territory for the Fort Leavenworth military reservation, and having in the conveyance retained the right to tax railroad, bridge and other corporations, their franchises and property, on said reservation, such retention of this power to tax was upheld by the Supreme Court of the United States.

When the rule announced in *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, and the facts of that case are analyzed and understood in the light of the facts of this case, it is plain the decision of the Supreme Court of Arkansas is not in conflict with the rule in the *Lowe* case. In fact, the rule announced by the Supreme Court of the United States in the *Lowe* case is authority for the decree of the Supreme Court of Arkansas in this case. The tax in each case was levied against property owned by another than the United States. The property involved in each case, which was the subject of the assessment, was not used for any governmental purpose. The Act of Kansas of 1875 ceding jurisdiction over the Fort Leavenworth military res-

ervation to the United States was not passed at the time of the acquisition of the lands comprising that reservation, but after the lands had been acquired by the United States. The Act of Arkansas of 1903 ceding jurisdiction over the Camp Pike military reservation to the United States was not passed at the time of the acquisition of the lands comprising that reservation, but long before the lands had been acquired by the United States.

In the Kansas act of cession there is an express reservation of the right to the State of Kansas to tax railroad, bridge and other corporations, their franchises and property, on the Fort Leavenworth reservation. This was a condition which could not have been attached to the act of cession if the lands comprising the Fort Leavenworth reservation had been acquired by the United States as contemplated by Article 1, Section 8, of the Federal Constitution.

In the Arkansas act of cession there is an implied reservation of the right to the State of Arkansas to tax personalty owned by others than the United States on the Camp Pike military reservation. This is, likewise, a condition which could not have been attached to the act of cession if the lands comprising the Camp Pike military reservation had been acquired by the United States as contemplated by Article 1, Section 8, of the Federal Constitution.

However, the reason advanced in the *Lowe* case for adopting the rule there announced does not exist here. The reason for exempting from State control land purchased by the United States, with the consent of the State, for the purposes specified in Section 8, Article 1, of the Federal Constitution, is to insure the free and unimpeded exercise of the independence and sovereign authority of the general government over such lands.

Under Article 1, Section 8, of the Federal Constitution, if a site is *actually purchased* by the Federal government, *with the consent of the State given at the time of the purchase*, for a specified government purpose, then no cession of jurisdiction by the State is necessary and no conditions can be attached by the State in giving her consent.

However, the undisputed facts here clearly show the consent of the State was not given at the time of the acquisi-

tion of Camp Pike by the United States, and further, the power to tax personal property thereon was reserved to the State of Arkansas by the cession act of 1903, as is hereafter shown.

Camp Pike was not acquired by the United States in the manner contemplated by Section 8, Article 1, of the Constitution of the United States.

The particular land in question lies within the boundaries of Pulaski County, Arkansas. It was donated to the United States at, or about, the time this government entered the World War in 1917. The purpose of acquiring the land was to use it during the World War as an army cantonment for training soldiers. Only temporary buildings were erected on the land.

The United States did not actually purchase or pay for the land in question. A corporation known as Army Post Development Company was organized under the laws of Arkansas. The stockholders of this corporation were public-spirited citizens of the State of Arkansas. They contributed money to a fund which was used to pay the purchase price for the land in question when an arrangement could be reached with the owners as to the purchase price to be paid. In the event of the failure to reach an agreement as to the price to be paid for the lands the United States exercised the right of eminent domain and instituted condemnation proceedings against the land. The corporation furnished the money required to be paid for the lands condemned.

The Secretary of War accepted the land for the United States, as provided by the Army Appropriation Act of August 29, 1916, Section One (1), Chapter 418, and which is cited as 39 Stat. L. 623. The Congress did not appropriate any money nor did the War Department expend any money for the acquisition of the land in question here.

These facts are conclusively established by the legislative enactments of the Congress, and were known to counsel for plaintiff in error. As a matter of fact, the law firm of which counsel for plaintiff in error are members was a stockholder in the corporation which purchased the land in question and donated it to the United States. This, however, must be construed in connection with the legislation of the

Congress. It is plain the various enactments of the Congress shows the United States did not appropriate nor pay any money for the land in question. The Supreme Court of the United States has held that a stipulation as to an alleged fact will not be construed so as to allow one to escape taxation when the legislation of the Congress shows the fact did not exist.

Utah & N. Ry. Co. v. Fisher, 116 U. S., 28.

In entering into the stipulation as to the manner in which the lands comprising the Camp Pike military reservation were acquired by the United States it was the intention of the parties to agree only upon the facts as they actually existed. Counsel for plaintiff in error drafted the stipulation and represented to counsel for defendant in error that the facts set forth therein were true.

The legislative act of the General Assembly of Arkansas of 1903 (now *Sections* 4564, 4565, *Crawford & Moses' Digest*, Statutes of Arkansas), cited by plaintiff in error, at pp. 20, 21 of their brief, does not give consent within the meaning of Section 8, Article 1, of the Constitution of the United States, to this purchase of lands made many years later. *The Act of* 1903 *does not give consent to the purchase at the time of a specified tract for a specified purpose, but gives consent to all past and future purchases for any governmental purpose.* It contains an implied condition, reserving the right to tax personal property of others than the United States on the reservation, which it would not do if it were a purchase under Section 8, Article 1, of the Constitution of the United States—that clause of the Federal Constitution not admitting of a condition of any kind by the State.

This case is within the rule announced in *Palmer v. Barrett*, 162 U. S., 399, where the Supreme Court of the United States said:

> "The land in question had been purchased by the United States without the consent of the State being given at the time the purchase was made. If, therefore, we assume that the lands were acquired by the government by purchase, still Section 8, of Article 1, of the Constitution of the United States, conferring upon Congress authority to exercise ex-

> clusive legislation over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings, had no application. *Fort Leavenworth R. Co. v. Lowe*, 114 U. S., 525. The question, therefore, depends upon the provisions of the act of the Legislature of the State of New York, already referred to, by which jurisdiction was ceded to the United States. * * * This Court said, in *Fort Leavenworth R. Co. v. Lowe* (p. 539), *supra*: 'It not being a case where exclusive legislative authority is vested by the Constitution of the United States; that cession could be accompanied with such conditions as the States might see fit to annex, not inconsistent with the free and effective use of the fort as a military post.' "

The rule is, a State ceding jurisdiction over lands acquired by the Federal government in a manner other than that contemplated by Seceion 8, Article 1, of the Constitution of the United States, may attach any conditions which do not hamper the use of the lands of the Federal government. When the United States acquires land in the manner in which the land comprising the Camp Pike reservation was acquired, jurisdiction must be ceded by the State. The cession act of 1903 must, therefore, be looked to in order to determine the extent of the power remaining in the State of Arkansas.

The Act of April 29, 1903, does not specify the jurisdiction remaining in the State of Arkansas as to taxation; but it does enumerate the taxation powers released by the State of Arkansas, *i. e.*, the power to tax lands and improvements thereon; and, by specifically enumerating the powers of taxation released, the State thereby retains all power to tax not thus released.

36 Cyc., 1122.
25 R. C. L., 981.

This construction of the cession act of Arkansas is in accordance with the maxim, *"expressio unius est exclusio alterius."*

The Supreme Court of Arkansas, in construing the provision of the cession act of 1903 as to the reservation by the State of Arkansas of the power to tax personal property of third persons on sites acquired by the United States for governmental purposes, said:

> "Thus it will be seen that by the terms of the Act itself it was not intended by the State to part with jurisdiction for the purpose of listing personal property of third persons in the reservation for assessment and taxation. The grant by the State expressly cedes its right to tax the land and buildings granted to the United States, and this of itself indicates an intention to reserve jurisdiction for taxation over the property of third persons located on such reservation. The United States accepted the grant upon the terms indicated, and, by its acceptance, acknowledged that there was no occasion for the State to cede exclusive jurisdiction to the United States or to exempt from State taxation the property of third persons situated upon the reservation, which was not used by the United States as a public agency or instrumentality for carrying out the purpose of the grant." (R. 90, 91.)

Assuming, but not conceding, the merchandise of plaintiff in error was located on Camp Pike military reservation, the taxing of the merchandise by the State of Arkansas would not interfere with, nor would it destroy or impair the use of the lands by the United States as a temporary cantonment. To require plaintiff in error to pay the tax here involved would not deprive the United States of any right whatever with respect to the lands comprising the Camp Pike military reservation. The exemption of plaintiff in error from the payment of the tax is not essential to the exercise by the United States of its independence and sovereign authority over the lands in question. Any argument to the contrary would be ridiculous.

Counsel for plaintiff in error have wholly failed to point out in what respect the enforcement of the tax here involved in any wise defeats, affects or embarrasses the effective use of the Camp Pike military reservation by the United States.

The Camp Pike grounds have no permanent forts or

barracks of the government on them, and are not and were not, at the time the assessment in question was made, in use by the government, having been used temporarily only as a cantonment for training soldiers for the World War. In such case the State retains all powers not inconsistent with the use being made by the government.

Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525, at p. 539.

It cannot be said the taxing by the State of Arkansas of personal property of non-residents on those grounds, which were not in use at the time by the government, would interfere with use of the land for governmental purposes in any respect.

The United States has not exercised jurisdiction over Camp Pike, but on the contrary, it has turned over the lands to the State of Arkansas. The first license of May 15, 1922, was in force when the assessment was made (R. 79-81), and the second, which was executed November 30, 1922, is still in force. (R. 82-84.) The first provides: "That the State of Arkansas shall make such use or uses of the real estate turned over to the State as it shall see fit, provided that such use or uses do not interfere with its use for military purposes." (R. 81.) The second provides: "That the United States reserves the right to occupy for War Department needs any or all of the storehouses hereby licensed," and that "the State of Arkansas shall care for and protect all government property within the area turned over to the State" (R. 83), and that the commission may "salvage alternate buildings for the purpose of decreasing fire risk and of utilizing the material obtained therefrom to keep in repair the remaining buildings turned over to the State of Arkansas." (R. 84.)

The State has complete control of these lands in all matters except that their military use by the United States cannot be impaired, and this is their status under the law. It is certain the taxation of property of individuals living thereon cannot interfere with their military use by the Federal government. The custodian of the Camp Pike military reservation pays his personal taxes annually to Pulaski County, Arkansas, and has never objected to paying the same.

Defendant in error insists the reason for the rule is lack-

ing in this case and, therefore, the rule as contended for by plaintiff in error has no application here. And, then, too, the United States had abandoned the use of these lands as a cantonment prior to the levy of the tax in question.

The land comprising Camp Pike military reservation was acquired by the United States several years after the passage of the cession act of 1903 by the General Assembly of Arkansas. It is conceded by plaintiff in error that such jurisdiction as the United States has over Camp Pike military reservation is by virtue of the cession act. The cession act was in full force and effect when the United States acquired the land in question.

The cession act granted a benefit and the acquisition of the land by the United States without dissent as to the terms of the cession act shows the United States intended to acquire and use the land under the conditions imposed by the cession act.

Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525.

The United States has not challenged the validity of the condition in the cession act impliedly reserving to the State of Arkansas the right to tax personal property of third persons located on Camp Pike military reservation.

Tax exemptions are never lightyl to be inferred.

Heiner, Collector, v. Colonial Trust Company, 275 U. S., 232.

It is well settled that a State may tax personal property situated on a government reservation within its limits and not belonging to the United States, or otherwise exempt from taxation.

26 R. C. L., 100.

The taxation of personalty of others than Indians upon an Indian reservation is permitted by a ruling of the Supreme Court of the United States. Cattle owned by other persons than Indians and grazing upon an Indian reservation within the territory of Oklahoma were assessed for taxation in Kay County, Oklahoma. The Indian reservation there under consideration had been attached to Kay County for judicial purposes by an order of the Supreme Court of Oklahoma prior to the date of the assessment. By authority of an act of the territorial legislature of Oklahoma the cattle grazing on the Indian reservation were assessed. Prior to the time

the taxes assessed were delinquent the owners began the removal of the cattle from the reservation and, in fact, beyond the limits of the territory of Oklahoma. Tax warrants were issued and served by the sheriff and the owners of the cattle filed actions asking an injunction preventing the collection of the taxes. The trial and appellate territorial courts held the tax levies made for territorial purposes and the county levy for court expenses were valid. All other county levies were held invalid. Both parties appealed to the Supreme Court of the United States. It was contended by the owners of the cattle the territory of Oklahoma was without power to tax the cattle grazing on the Indian reservation because exclusive jurisdiction over the Indians and their lands, and over all matters in any way affecting them, was in the United States.

This is the same contention which plaintiff in error makes here. It was also contended there, as here, that the taxation of the personal property located on the reservation was an invasion of the jurisdiction and control of the United States over the Indians and their lands. The court denied both contentions, and said:

> "It is claimed that the legislative assembly of the territory of Oklahoma was without power to enact the law of March 5, 1895, providing for the taxing of cattle grazing upon the Indian reservation, under leases granted by the Indians, because, both before and since the creation of said territory, exclusive jurisdiction over said Indians and their lands, and over all matters in any way affecting them, or in which they are interested, is in the United States.
>
> * * * * * *
>
> "And the contention is that, irrespective of the question whether said lands are, by the treaties, excluded from the limits and jurisdiction of the territory of Oklahoma, the taxation of cattle located for grazing purposes upon the reservations, under leases duly authorized by act of Congress, is a violation of the rights of the Indians, and an invasion of the jurisdiction and control of the United States over them and their lands.

"As to that portion of the argument which claims that, even if the Indians were not interested in any way in the property taxed, the territorial authorities would have no right to tax the property of others than Indians located upon these reservations, it is sufficient to cite the cases of *Railway Co. v. Fisher*, 116 U. S. 28, and *Maricopa & P. R. Co. v. Arizona*, 156 U. S. 347, in which it was held that the property of railway companies traversing Indian reservations are subject to taxation by the States and territories in which such reservations are located.

"But it is urged that the Indians are directly and vitally interested in the property sought to be taxed, and that their rights of property and person are seriously affected by the legislation complained of; that the money contracted to be paid for the privilege of grazing is paid to the Indians as a tribe, and is used and expended by them for their own purposes; and that if, by reason of this taxation, the conditions existing at the time the leases were executed were changed, or could be changed, by the Legislature of Oklahoma at its pleasure, the value of the lands for such purposes would fluctuate or be destroyed altogether, according to such conditions.

"But it is obvious that a tax put upon the cattle of the lessees is too remote and indirect to be deemed a tax upon the lands or privileges of the Indians. * * * * *

"It is further contended that this tax law of the territory of Oklahoma, insofar as it affects the Indian reservations, is in conflict with the constitutional power of Congress to regulate commerce with the Indian tribes. It is said to interfere with, or impose a servitude upon, a lawful commercial intercourse with the Indians, over which Congress has absolute control, and in the exercise of which control it has enacted the statute authorizing the leasing by the Indians of their unoccupied lands for grazing purposes.

> "The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, by a State or territory, of property of others than Indians would be an interference with congressional power. * * *
>
> "The taxes in question here were not imposed on the business of grazing, or on the rents received by the Indians, but on the cattle as property of the lessees, and as we have heretofore said that such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so is it too remote and indirect to be regarded as an interference with the legislative power of Congress."
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> *Thomas v. Gay*, 169 U. S., 264.

The *Thomas v. Gay* case, *supra*, was followed in the cases of *Wagoner v. Evans*, 170 U. S., 588; *Foster v. Pryor*, 189 U. S., 325, and *Montana Catholic Missions v. Missoula County*, 200 U. S., 118.

Counsel for plaintiff in error seek to point out a distinction which does not exist in the cases of *Thomas v. Gay*, 169 U. S., 264; *Wagoner v. Evans*, 170 U. S., 588; *Foster v. Pryor*, 189 U. S., 325. They say the rule announced in these cases is not applicable to this case for the reason the court was there dealing only with the power of a territory to tax property of persons other than Indians located on Indian reservations. It is contended the consent of a State could not have been given to any purchase because there was no State involved there. Counsel also contend the holding in the case of *Montana Catholic Missions v. Missoula County*, 200 U. S., 118, has no application to the facts here. The distinction which counsel would make here was not recognized by the United States Supreme Court in the first case. On this point the court said:

> "The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, *by a State or territory*, of

property of others than Indians would be an interference with congressional power."

Thomas v. Gay, 169 U. S., 264, at pp. 274-275.

The jurisdiction and control of the United States over the Indians and their lands is equally as absolute and exclusive as over lands purchased by the United States with the consent of the Legislature of a State for the erection of forts, etc. The taxation of personalty of others than Indians upon an Indian reservation being permitted by the express holding of the Supreme Court of the United States, we, therefore, insist the tax here under consideration is valid and enforceable.

Personal property located at Schofield Barracks, a military reservation of the United States in the territory of Hawaii, and owned by an officer of the United States Army, has been declared to be subject to taxation by the territorial government of Hawaii. This was the holding of the Supreme Court of the Territory of Hawaii. The property sought to be taxed there was an automobile. It was the contention of the officer of the United States Army that the automobile was located on the military reservation on tax day and, for that reason, was not taxable. The court held otherwise, however, and said:

"The only question is, whether or not the automobile in question is exempt from taxation by reason of its being upon a military reservation. * * * * It is contended on behalf of the petitioner that the Federal government having exclusive control of the said military reservation that persons and property thereon are not within the jurisdiction of the territory for the purposes of taxation. The same question has arisen in a number of cases, while in other cases questions of jurisdictions of a kindred nature have been raised in both civil and criminal cases. In *Territory v. Carter*, 19 Haw. 198, it was held that the territorial courts have jurisdiction of misdemeanors committed on lands reserved by the United States for naval purposes, citing in support of the rule *Territory v. Burgess*, 8 Mont., 57, and *Reynolds v. People*, 1

Colo., 179. The same rule was announced in *United States v. Bateman*, 34 Fed., 86, where the defendant was charged with an offense committed on the Presidio military reservation in California. Early Wyoming cases sustain the contention of the petitioner, but these decisions have been overruled by the Wyoming court. In *Noble v. Amoretti*, 11 Wyo., 230, it was held that an Indian trader, licensed by the government to trade with the Indians on an Indian reservation, subject to the jurisdiction of the Federal government, is subject to the jurisdiction of the State, and his property situated on the reservation subject to taxation. In *Thomas v. Gay*, 169 U. S., 264, it was held that the Legislature of Oklahoma Territory had jurisdiction to provide for the taxation of property of persons other than Indians situated on Indian reservations, and that such statute does not conflict with the provisions of the Federal Constitution. This decision was approved in *Wagoner v. Evans*, 170 U. S., 588; in *Foster v. Pryor*, 189 U. S., 325, and in *Catholic Missions v. Missoula County*, 200 U. S., 118, 129. See also *Gay v. Thomas*, 5 Okla., 1, and the same case, 7 Okla., 184. The Supreme Court of Arizona held in *Territory v. Delinquent Tax District*, 3 Ariz., 302, that private property of persons other than Indians upon an Indian reservation is subject to taxation, although that of Indians is not.

"Lands within Indian reservations are within the exclusive jurisdiction of the Federal government, and persons other than Indians cannot use such lands or lease them without permission from the Federal government, yet it has been held that the civil authorities of a State or territory may execute process upon persons other than Indians on such reservations, unless there is some treaty provision excluding the jurisdiction of the State or territory within which such reservations are located. *See Langford v. Monteith*, 102 U. S., 145; *Utah & N. R. Co. v. Fisher*, 116 U. S., 28, and a number

of later cases. The solicitor general, in an elaborate and interesting opinion, approved by the attorney general, reported in Opinions of Attorney General, Vol. 26, p. 91-99, has followed the rules heretofore mentioned and held that property upon the Subig Bay naval reservation was not exclusively within the jurisdiction of the Navy Department of the United States and is subject to taxation by the civil authorities.

"The Organic Act, Sec. 55, grants to the Territory the power to legislate upon all rightful subjects of legislation, including that relating to taxation of person and property. Section 1236, R. L., provides for the annual taxation of all real and personal property within each taxation district. The military reservation, upon which Schofield barracks are located, is within the first taxation district, of which the respondent is asessor and collector. We have no territorial statute, and Congress has passed none, to which our attention has been called, exempting automobiles or other private property on military reservations from taxation. Congress undoubtedly has the power to enact a statute exempting automobiles owned by persons in the army from taxation, when kept upon a military reservation in a Territory, but it has not done so. In the absence of legislation, Federal or territorial, exempting the automobile in question from taxation by the Territory of Hawaii, we hold that it is subject to taxation under the statutes of the Territory."

Cassels v. Wilder, 23 Haw., 61, at pp. 62-65.

Counsel comment at length on the case of *Cassels v. Wilder, supra*. It is said the authority for the holding in that case was an opinion of the solicitor general, which was approved by the attorney general. A careful examination of the *Cassels v. Wilder* case, however, refutes this statement. The holding in the cited case was based upon the authority of decisions of the Supreme Court of the United States and courts of last resort of the different States and territories of the United States.

The Supreme Court of Oklahoma has held the taxing officials of Comanche County, Oklahoma, have the power to levy and collect taxes on personal property belonging to private individuals and located on the Fort Sill military reservation, which is wholly within the boundaries of Comanche County and constitutes a part thereof. It also held the legislative power of Oklahoma territory extends to all rightful subjects of legislation just as the legislative power of the State of Arkansas covers all proper matters of legislation. Rice, and another, were partners in the cattle business in Oklahoma territory. They owned quite a lot of cattle, which were located on the Fort Sill military reservation, in Comanche County, Oklahoma. The taxing officers assessed these cattle for territorial, county, township and school district purposes. The owners of the cattle instituted an action against the sheriff of Comanche County, Oklahoma, praying that he be restrained from levying a tax warrant in his hands on the property of plaintiffs. The trial court granted an injunction against the collection of the school district taxes on the ground that none of the cattle owned by plaintiffs had been within the school district, but denied the injunction as to the taxes for other purposes. The plaintiffs thereupon sued out a writ of error in the Supreme Court of Oklahoma. The court said:

> "The sole contention of the plaintiffs is that, inasmuch as these cattle were located on a military reservation of the United States, even though such reservation is within an organized county of Oklahoma, they cannot be taxed under the territorial laws, asserting that a military reservation is under the sole legislative control of the United States. We have read counsel's brief, and while it is true that, as long as Oklahoma remains a territory, Congress may legislate as to all matters pertaining to this reservation and exclude the territorial authorities from exercising any control thereof, it has not done so. By section 6 of the Organic Act of the territory of Oklahoma, it is provided: 'That the legislative power of the territory shall extend to all rightful subject of legislation, not inconsistent with the Constitution and laws of the United States, but no

law shall be passed interfering with the primary disposal of the soil, no tax shall be imposed on the property of the United States, nor shall the lands and other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right of private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value.' Under this express grant of power from Congress, the territory may subject all property within the territory to taxation except the property of the United States. It is immaterial where the property is located. If it is not the property of the United States, the Legislature may require it to bear its just proportion of the burdens of government. A military reservation in a territory is no more under the legislative control of Congress than is an Indian reservation; and it has been expressly held by the Supreme Court of the United States that the territory may tax property on an Indian reservation, even though it is not located within an organized county, but only attached to an organized county for judicial purposes. *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340, 42 L. Ed. 740; *Polson v. Purcell*, 4 Okla., 93, 46 Pac. 578; *Wagoner v. Evans*, 170 U. S., 588, 18 Sup. Ct. 730, 42 L. Ed. 1154; *Stell v. Territory*, 4 Okla., 497, 46 Pac. 1117; *Truscott, Co. Treas., v. Hurlbut Land & Cattle Company*, 73 Fed., 60, 19 C. C. A., 374; *Foster v. Pryor*, 189 U. S., 325, 23 Sup. Ct. 549, 47 L. Ed. 835; *Atchison, T. & S. F. R. Co. v. Bryan*, 11 Okla., 357, 66 Pac. 348. See also *Ft. Leavenworth R. Co. v. Lowe*, 114 U. S., 525, 5 Sup. Ct. 995, 29 L. Ed. 264.

"Under the laws of the territory of Oklahoma the property in question is subject to taxation in Comanche County. The property of the United States located on this reservation or anywhere else in the territory cannot be taxed. The territory is expressly prohibited as to such taxation by the Or-

ganic Act. But should Congress exclude the territory from taxing the property of the plaintiff simply because it is located on this reservation? It did not intend to do so, nor has it done so. Counsel have overlooked the fact that Congress has not only exclusive legislative control over military reservations in the territories, but it has legislative control of the territories themselves. The Fort Sill military reservation is within the organized county of Comanche and constitutes a part thereof. The persons and property within such reservation have the protection of the laws of the territory, and it is only equitable that the property therein not belonging to the United States should pay a part of the expenses of the same. If Congress had intended that the property on this or other reservations in the territory should not be taxed, it would have so declared, as it did with reference to property of the United States and property belonging to certain Indians. As the property in question was within an organized township of an organized county of the territory, the power exists to exact taxes for all three purposes, to-wit: territorial, county and township."

Rice v. Hammonds, 19 Okla., 419, 91 Pac. 698.

The case of *Rice v. Hammonds, supra*, was cited in *Concessions Co. v. Morris*, 186 Pac. 655, relied on by plaintiff in error, and a wrong construction placed on it there. The fact that the government had control of the territory, as well as of the reservation, was not important. The power of taxation was surrendered by the government to the territory, which thereafter had such power as much so as the State of Arkansas has, where, as here, it is not surrendered. The Supreme Court of Oklahoma held the Fort Sill military reservation was within Comanche County and was a part of it. It also held the persons and property within such reservation had the protection of the laws of the territory and it was only equitable that the property therein not belonging to the United States should pay a part of the expenses of same.

The territory of Oklahoma had power to tax all property within its limits save that of the United States, which was exempted. Here the State of Arkansas has the power to tax all property within its limits except that exempted. The question there was, as it is here, whether the reservation was within the territorial limits, and it was held to be within such limits. The case is on all fours with this one, so far as taxing personal property on Camp Pike is concerned.

The Supreme Court of Nebraska has held that a post trader at a military reservation and under the protection and control of the War Department, is not exempt from assessment for taxation by the county and State within which the reservation is located. The cession act of Nebraska ceded jurisdiction over the military reservation just as the cession act of Arkansas did. There was a reservation of the right to serve process, either civil or criminal, by the State of Nebraska, except so far as such process might affect the real and personal property of the United States. In discussing whether the property of the post trader was taxable by the State of Nebraska, the court said:

> "The question presented is, was the property and tradership of the defendant in error, located and confined exclusively within the reservation and military post of Fort Niobrara, subject to taxation by the county of Cherry, or the State of Nebraska? The second section of the act cited expressly reserves concurrent jurisdiction with the United States in and over the military reservation for all civil process in all cases, and such other criminal or other process as may issue under the laws or authority of this State against any person charged with crime or misdemeanor committed in this State, and may be executed as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States. It is not apparent that this proceeding affects the real or personal property of the United States."
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> *County of Cherry et al. v. Thacher*, 32 Neb., 350, 49 N. W. 351, at p. 352.

The facts of the Nebraska case more strongly warranted the exemption from taxation of the property of the post

trader than the facts here warrant the exemption from taxation of plaintiff in error. In the Nebraska case there was no question about the permanency of the location of the property taxed on the military reservation. But here the property sought to be taxed was removed from the military reservation at Camp Pike, Arkansas, just as quickly as it was possible to transport it to the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

In a recent Virginia case decided by the Virginia Supreme Court of Appeals on January 14, 1926, it was held a mercantile business carried on in a railroad station situated on land ceded to the United States for an approach to an interstate bridge was subject to a State license tax. In the Virginia case it was conceded by the court that the State could not tax land or buildings thereon which had been ceded by the State of Virginia to the United States. However, the court there expressly held that personal property situated in buildings upon said land and owned by third parties was liable to be taxed by the State and county in which it was found.

The General Assembly of Virginia ceded the land to the United States for abutments and approaches of a proposed bridge across the Potomac river. The land was purchased by the United States with the consent of the Legislature of the State of Virginia. The legislative enactment ceding jurisdiction retained the right to State authorities to execute legal process on the land ceded and also provided the land acquired by the United States and the abutments and approaches built for the bridge should be exempt from taxation so long as the United States should continue to be the owner of the land and the erections thereon.

The question involved in the case was said, by the court, to be as follows:

> "The question here at issue, however, is whether the land in Arlington County, purchased for an approach to the Key bridge, by the United States, with the consent of the State of Virginia, is land over which the Congress has exclusive legislative jurisdiction, just as it has over the District of Columbia and over lands purchased by consent of the State for the erection of forts, magazines, ar-

senals, dockyards and other needful buildings. If it can be so held, then Congress having the exclusive legislative power, the State of Virginia has no jurisdiction and cannot impose a fine upon the accused for refusing to pay a State license tax for transacting business in that territory."

In discussing the liability of personal property of third persons on such land to taxation, the court said:

> "That the right of a State to tax the property of others located upon said lands owned by the United States, although it cannot tax such lands, will not be held to be abandoned by the State except for the most compelling reasons, is quite manifest from several decisions of the Supreme Court of the United States."
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> *Nikis v. Commonwealth*, 131 S. E. 236, 46 A. L. R. 219 (Virginia).

The Lowe case, *supra*, was relied upon by the plaintiff in error in claiming an exemption from taxation in the Virginia case as it is here by plaintiff in error, but, under the facts there the Supreme Court of Appeals of Virginia refused to apply the rule contended for by Nikis. And we submit, under the facts of this case, the rule announced in the Virginia case ought to be followed here. To apply the rule as argued for by plaintiff in error would be unreasonable under the facts of this case.

Numerous decisions of the United States Supreme Court are cited in the Virginia case.

It would be foolish in the extreme for the State of Arkansas to cede away its power to tax individual property on reservations of the United States, and all presumptions are indulged that the State has not thus given away any part of its taxing power. The power to tax personalty owned by individuals on Camp Pike grounds is clearly shown by the cession act of 1903, which releases the power of the State to tax property thereon only as to real property and improvements owned by the United States.

The Supreme Court of Montana has held that the fact that an Indian post trader is licensed by the government to trade with Indians does not exempt his stock in trade located

on an Indian reservation from State and county taxation, such trader being a mere licensee and not an agent of the government. Cosier and another, partners, as plaintiffs, filed an action against McMillan, as county treasurer of Valley County, Montana, as defendant, asking the defendant be restrained from collecting taxes on property situated on the Fort Peck Indian reservation. Plaintiffs were duly licensed Indian post traders on the reservation named. The trial court held the personal property of plaintiffs was subject to taxation, although located on the Indian reservation. Plaintiff appealed to the Supreme Court of Montana and the cause was affirmed. The court said:

> "Although the people of the State of Montana agreed, as a condition to the admission of the State into the Union, to disclaim any right or title to all lands lying within the limits of the State owned or held by any Indian tribes, and that until title thereto shall be extinguished by the United States the same shall be and remain subject to the disposition of the United States, and under the absolute jurisdiction and control of Congress, still Indian reservations are not without the jurisdiction of the State for the purposes of taxing personal property, in which the Indians are not interested, held upon such reservations. In *Truscott v. Cattle* Co., 19 C. C. A., 374, 73 Fed. 60, the United States Circuit Court of Appeals said, in reference to taxing cattle upon an Indian reservation: 'We are unable to see any good reason why the authority of the State and its subordinate sub-divisions, the counties, may not also include the taxation of all such personal property found within their geographical limits, although upon the reservation in question, provided, as in this case, the Indians are in no way interested in it.' Appellants, however, would have the courts except their property from the operation of the taxing power of the State because it constitutes the stock in trade of an Indian post trader, and is used in trading with the Indians under a license obtained from the government of the United States; or, in other words, appellants

contend that the presence of an Indian trader with a stock of goods on an Indian reservation is an agency of the general government to carry out its treaty with the Indians, and is expressly authorized by law. We cannot concur in this argument. There was a time when the government furnished the merchandise traded to the Indians, and when the person who dealt out the property so furnished acted as an agent of the United States, which made the commerce so conducted with the Indians an agency of the government. But long ago (in 1834) that policy was changed, and now any loyal citizen is authorized to trade with an Indian tribe upon giving a bond conditioned to faithfully observe all laws and regulations made for the government of trade and intercourse with the Indian tribes. Rev. St. U. S., Sec. 2128 *et seq.* So that at present an Indian post trader is a licensee with authority to trade with the Indians, required, of course, to observe the laws and regulations appertaining to such intercourse—a privileged trader on his own account, responsible to no one except for the observance of the aforesaid laws and regulations and for violation of the same. His real connection with the government seems to be that he is privileged, upon conditions and under regulations, to go onto the reservation to seek as customers the wards of the United States living upon the Indian reservation, permission to trade with whom upon their reservation can only be obtained from the guardian government, which reserves the right to revoke the license or terminate the privileges at its pleasure. Id., Sec. 2131. We are unable to see how such a relationship between a citizen and the general government makes the citizen enjoying the privilege an agent of the United States, or how his goods, in which neither the government nor the Indians have any interest, are a Federal agency or means employed by the government for the execution of its powers, the taxation of which by the State is forbidden by implications of the Constitution of the

United States; provided, there is no unjust discrimination between the property of the citizen situate upon the reservation and other like kinds taxed by the State. *Thompson v. Railroad Co.*, 9 Wall. 579; *Railroad Co. v. Peniston*, 18 Wall. 5; *Central Pac. R. Co. v. California*, 162 U. S. 91, 16 Sup. Ct. 766; *Moore v. Beason* (Wyo.), 51 Pac. 875; *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340; *Wagoner v. Evans*, 170 U. S. 588, 18 Sup. Ct. 730.

Cosier et al. v. McMillan, county treasurer, 22 Mont. 484, 56 Pac. 965, at p. 966.

The Supreme Court of Wyoming has held that personal property, including a stock of merchandise of a licensed Indian trader, located within the limits of the Shoshone Indian reservation, is subject to taxation by the State in the same manner and to like extent as all other property within the county. It was also held in that case that the tax imposed was not one upon an agency of the United States, and further that it did not place a burden upon commerce with an Indian tribe.

The action was instituted by Noble and others, as plaintiffs, against the county treasurer and collector of taxes of Fremont County, Wyoming, as defendant, seeking to restrain the defendant from selling personal property of plaintiffs to satisfy delinquent personal property taxes. The trial court reserved certain questions and requested the Supreme Court to answer them. The reserved questions of interest here were as follows:

First. Under the laws of the State of Wyoming, is personal property located upon and within the limits of the Shoshone Indian reservation in Fremont County, Wyoming, which personal property is used by the plaintiffs in their business and occupation as licensed Indian traders in the manner set forth in the agreed statement of facts in this case, subject to taxation in the county of Fremont, State of Wyoming?

Second. Are the plaintiffs exempt from taxation in the county of Fremont, State of Wyoming, by reason of their being licensed Indian traders in said reservation, engaged in the business of dealing with the Indians on that

reservation, and also with white people living on and off said reservation, and those traveling through and across said reservation, such as freighters and others?

In deciding the property located within the limits of the Indian reservation was taxable by the State, the court said:

> "Questions 1 and 2 relate to the validity of the taxes in question. The jurisdictional authority of the State to tax property located upon the Shoshone Indian reservation has been before this court in several cases.
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> "The first case is that of *Moore v. Board of Commissioners of Sweetwater County*, 2 Wyo., 8. In that case the taxing power of the State over property on such reservation was denied. The same conclusion was reached in *Fremont Co. v. Moore*, 3 Wyo., 200, 9 Pac. 438. In both cases not only was the right denied to tax the merchandise of an Indian trader, but also the authority to tax other property of the trader on the reservation, not necessarily connected with his business as such trader.
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> "In the case first above cited the decision was based upon the broad ground that the reservation was without the taxing jurisdiction of the territorial authorities. And the court in the later case may be said to have been influenced by similar reasons, though it was held in that case that the distraint of personal property on the reservation by a tax collector would, as to the merchandise of the trader, amount to an infraction of the policy of the government as set forth in its treaty with the Indians, and, as to other property, would result in an infraction of the treaty. So far as concerns property other than goods and personal property of an Indian trader, the cases above mentioned were directly overruled by the decision of this court in the case of *Torrey v. Baldwin*, 3 Wyo., 430, 26 Pac., 908, wherein it was held that certain cattle owned by one not an Indian trader, kept and located on the reservation, were subject to State

taxation, and the theory that the reservation was outside of the taxing jurisdiction of the State was shown to be unsound. In the more recent case of *Moore v. Beason*, 7 Wyo., 292, 51 Pac., 875, we held that cattle and horses belonging to a licensed Indian trader, and kept and grazed upon the reservation with the consent of the Indians, who were paid for the privilege, were subject to State taxation. The decisions of other courts are in harmony with our conclusions in *Torrey v. Baldwin* and *Moore v. Beason*, and the power of the State to tax property within the limits of Indian reservations and belonging to persons not Indians, is now well settled. *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340, 42 L. Ed. 740; *Wagoner v. Evans*, 170 U. S. 588, 18 Sup. Ct. 730, 42 L. Ed. 1154; *Truscott v. Hurlbut, L. & C. Co.*, 19 C. C. A. 374, 73 Fed. 60; *Gay v. Thomas* (Okla.), 46 Pac. 578. The cases of *Thomas v. Gay* and *Wagoner v. Evans, supra*, involved the taxation of cattle kept within reservations in Oklahoma under leases with the Indians, duly authorized by act of Congress, and the tax was upheld. The court held that such tax did not constitute an invasion of the jurisdiction and control of the United States over the Indians and their lands, and it was said to be obvious that 'a tax put upon cattle of the lessee is too remote and indirect to be deemed a tax upon the lands or privileges of the Indians.' * * * *

* * * * * "In the case of reservation in question, whether the fact is material or not, the traders are in competition with other merchants in towns and places off the reservation, in their dealings with people other than Indians. There should be some good reason, therefore, if they are to be exempted from bearing their share of the burdens of government in the shape of taxation. We do not think that the taxation of the goods of the Indian trader is a tax upon an agency of the general government, in the sense in which such a tax is prohibited. We are unable to perceive how the tax

operates to hinder or defeat the operations of the government. Should it be conceded, however, that the trader stands in the relation of an agent to the government, we would not be inclined to regard a tax upon his property as having the necessary effect to deprive him of the efficient exercise of his power to serve the government as it is intended he shall serve it; having in mind the nature and extent of his privileges, and the purpose of the license under which he carries on his business. *R. R. Co. v. Peniston*, 18 Wall. 5, 21 L. Ed. 787.

* * * * *

"Although counsel for plaintiffs do not seem to assail the validity of the taxes in question upon the ground that they amount to a regulation of commerce with Indian tribes, that question is deserving of some attention, especially as the early case of *Foster v. Board, supra*, was decided on that ground by the Minnesota court. * * * His right to do so cannot be interfered with by the State. But is that right interfered with by a tax upon his property that is laid equally upon all other property of like kind? While it is true that a tax upon any article that may become the subject of commerce, in a sense, affects commerce itself, that fact does not determine that the tax is upon commerce. Although the effect of the tax may be an increase of the expenses of the trader, we think it cannot for that reason be justly said that the tax amounts to a regulation of commerce. * * * It is manifest that, to trade with the Indians, they must have goods to sell. To buy from the Indians, they must have capital to be so employed. Yet how would a tax upon such capital constitute a tax upon a regulation of commerce with the Indians?

"It appears to us that the reasoning in the case of *Thomas v. Gay, supra*, is applicable to, and largely decisive of, this question. Answering the argument that the Indians were directly interested in the property sought to be taxed, for the reason

that they received compensation from the owners of the cattle for the privilege of grazing them on the reservation, it was said that the tax was too remote and indirect to be deemed a tax on the lands or privileges of the Indians. The tax in that case was also attacked on the ground that it conflicted with the power of Congress to regulate commerce with the Indian tribes; that it placed a servitude upon a lawful intercourse with the Indians, over which Congress has absolute control. The court, however, said: 'The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, by a State or territory, of property of others than Indians, would be an interference with congressional power.' It was further said by the court that, 'The taxes in question were not imposed on the business of grazing, or on the rent received by the Indians, but on the cattle, as property of the lessees, and, as we have heretofore said, that as such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so it is too remote and indirect to be regarded as an interference with the legislative power of Congress.' This holding of the learned court applies with full force, it seems to us, to the case in hand. The tax upon the stock of goods of the trader is too remote and indirect to be deemed a tax or burden upon commerce with an Indian tribe. Indeed, the contention that the power of Congress was interfered with in the case of the taxation of cattle kept on the reservation by the consent and to the benefit of the Indians, with the approval of Congress, presented a stronger ground for invoking the constitutional provision as to the exclusive right of Congress to regulate commerce with the Indian tribes than is presented by the facts in the case at bar."

Noble et al. v. Amoretti, 11 Wyo. 230, 71 Pac. 879, at pp. 880-882.

The Supreme Court of Michigan held territory, the jurisdiction over which had been ceded by the State to the United States for canal purposes, was not outside of the State so far as taxation of private personal property thereon was concerned. By an act of its legislative assembly the State of Michigan had ceded all jurisdiction and control over certain land to the United States for a canal and public works thereon, reserving jurisdiction only for the service of civil and criminal process. This act was construed not to cede exclusive jurisdiction to such an extent as to interfere with the taxation of private personal property located on such land by the State of Michigan and her subordinate taxing agencies. The court said:

> "Upon the main proposition as to whether the tax was rightfully laid, we are to consider whether the jurisdiction of the State extended for that purpose to any personal property situated and used on the ceded lands. If the territory is beyond the jurisdiction of the State and within the exclusive jurisdiction of Congress, as the trial court held, then the judgment is right. * * * * *
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> "In *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525, 5 Sup. Ct. 995, 29 L. Ed. 264, and in *Chicago, R. I., etc., R. Co. v. McGlinn*, 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270, the principles affecting a construction of the grant were exhaustively considered by the Supreme Court of the United States, with conclusions which, applied here, require, we think, a reversal of the judgment. As a fact in both cases, it appeared that the State of Kansas ceded to the United States exclusive jurisdiction over and within the territory known as the Fort Leavenworth reservation in that State, the title to which was in the United States, saving the right of the State to serve civil and criminal process within said reservation, and saving further to said State the right to tax railroad, bridge and other corporations, their franchises and property, on said reservation. The State levied a tax on the track, right-of-way, franchises, roadbed, telegraph line and instruments connected therewith on

the reservation, the tax was paid under protest, and the suit was brought to recover the money so paid. It was the contention of the railroad company that the act of cession operated under the Constitution of the United States to vest in the United States exclusive jurisdiction over the reservation, and that the last saving clause, being inconsistent with the result, should be rejected. This contention the court rejected, holding: 'That a building on a tract of land owned by the United States used as a fort, or for other public purposes of the Federal government, is exempted, as an instrumentality of the government, from any such control or interference by the States as will defeat or embarrass its effective use for those purposes. But, in order that the United States may possess exclusive legislative power over the tract, except as may be necessary to the use of the building thereon as such instrumentality, they must have acquired the tract by purchase, with the consent of the State. (Article 1, Section 8, Subd. 17.) This is the only mode prescribed by the Federal Constitution for their acquisition of exclusive legislative power over it. When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended.' * * * * * * * *

"In the case at bar, there is not, in terms, as there was in the case of the Fort Leavenworth reservation, a cession to the United States of exclusive jurisdiction and, as the cession was not made upon purchase by the United States and consent of the State thereto, there is no implication of a cession of exclusive jurisdiction except as the implication may be raised upon the proviso, which, however, reserves no legislative jurisdiction. And the jurisdiction expressly reserved may be accounted for upon the theory that, for whatever reason the cession was made, it was sufficient to confer exclusive jurisdiction in the United States to control the canal, any

buildings and works connected with it, and with its operation for the purposes of its operation. There was no occasion to the State to cede exclusive jurisdiction to the United States, no apparent reason for denying to the State such jurisdiction, legislative and other, as did not interfere with the control by the United States of the property transferred for the purposes of the transfer.

"We construe the grant itself as a cession of less than exclusive jurisdiction. * * * In this view, the ceded territory is not out of the State of Michigan so far as the operation of its tax laws is concerned, but is within the State. The tax levy in question was properly made, and the tax was a lawful one."

Oscar Daniels Co. v. City of Sault Ste. Marie, 175 N. E. 160, at pp. 163-164 (Michigan).

It will be noticed the Arkansas cession act of 1903, like that of Michigan, does not give exclusive jurisdiction in words and does not expressly give any legislative jurisdiction at all. The Arkansas cesson act goes further than the Michigan act and regulates the question of taxation fully, thus setting at rest the right of the State to impose the tax here in question. If in Michigan such right of taxation can be inferred from the cession not being exclusive, certainly there should be no trouble here in imposing the tax which is authorized by clear reservation.

The Supreme Court of Arkansas in 1892 held the estate of a lessee of land belonging to the United States and within the Hot Springs reservation was not exempt from taxation. This decision was prior to the cession of jurisdiction by the State of Arkansas to the United States over the Hot Springs reservation. The Hot Springs reservation, like the Fort Leavenworth reservation, was a part of the public domain of the United States when Arkansas was admitted to statehood, and the United States did not retain jurisdiction over the Hot Springs reservation when Arkansas was admitted as a State. Subsequent to the decision, the General Assembly of Arkansas passed a cession act ceding jurisdiction over the Hot Springs reservation to the United States. This act was approved February 21, 1903. It is not to be

confused with the cession act under consideration in the instant case, which was approved April 29, 1903. The Arlington Hotel Company cases, cited by counsel for plaintiff in error in their brief, fall within the provisions of the cession act of February 21, 1903, and not within the terms of the act of April 29, 1903. In holding the estate of the lessee of land belonging to the United States and within the Hot Springs reservation taxable, the Supreme Court of Arkansas said:

> "The interest of the lessee in the land is not the property of the United States, and it is not a means employed by the government to obtain a governmental end. The power to tax that interest does not involve, therefore, the power to destroy or disturb any interest of the United States government. * * * * * * *
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> * * * * * * "All property in Arkansas belonging to individuals is subject to taxation except such as is specifically exempted by the Constitution. Nothing else is or can be made exempt. * * * * The interest which the appellant acquired by his lease was property, and is not exempt under the law. It was the duty of the assessor to return it for taxation."
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> *Ex parte Gaines*, 56 Ark., 227, 19 S. W. 602.

The case of *Concessions Company v. Morris*, 186 Pac. 655, mainly relied upon by the appellee, may easily be distinguished from the instant case in that the Legislature of the State of Washington consented, at the time, to the acquisition by the United States of the specific tract for the specific purpose proposed, thus coming within Section 8, Article 1, and its power over the land could not be otherwise than unconditional and absolute. That the court so held is apparent from its opinion, which says: "A territory has been created which resembles that of the District of Columbia, the only reservation being that the State can serve civil and criminal process," which provision is held not to be a condition. The instant case does not come within Section 8, Article 1, but requires a cession of the State which may have conditions attached expressly or by impli-

cation, according to the provisions of the cession, and such conditions are found here.

The case relied upon by plaintiff in error also held, by inference, that the property of Concessions Company might be assessed for taxation at Seattle, in King County, Washington, that being the place of its residence.

CONCLUSION.

Defendant in error earnestly insists the decree of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

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TOM POE,
For Defendant in Error.

APPENDIX

AN ACT to Abolish Township Boards of Assessment and Valuation and to Create a Board of Equalization in All Counties of the State Having a Population in Excess of 75,000 Persons.

Section

1. County equalization board. When authorized. Qualification.
2. Time of meeting.
3. Organization of board.
4. Clerk of board. Compensation.
5. Compensation of board members.
6. Duty of clerk. Rules for equalization.
7. Appeals.
8. Time of appeals.
9. Notice to tax payers.
10. Powers of equalization board.
11. Repealing clauses.
12. Emergency clauses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

Section 1. County Equalization Boards—When Authorized—Qualification. In all counties of Arkansas having a population, according to the last Federal census, in excess of 75,000 persons, the county judge on or before the first day of July of each odd numbered year shall appoint a board of equalization to be composed of nine intelligent citizens, real estate owners and qualified electors, to be selected from different portions of the county, who shall hold their office for two years. Any vacancy occurring in said board shall be filled by appointment by the county judge.

Section 2. Time of Meeting. The county board of equalization shall meet annually on the first Monday in August, at the office of the clerk of the county court, and each member shall take the oath of office prescribed by Section 20 of Article XIX of the Constitution of the State of Arkansas, and further that he will fearlessly, impartially and faithfully equalize the value of all property assessed. The board shall exercise its functions as a board in the equalization of prop-

erty until the fourth Wednesday of October; provided, special sessions may be held upon the order of the county judge. The president of the board shall have power to administer oaths to witnesses apearing before the board.

Section 3. Organization of Board. At the first meeting of the said board it shall organize by electing one of its members president. The equalization board may also be divided into working groups, to each of whom may be assigned the task of equalizing the property of each city of the first class, or of the property of rural or country districts, subject to revision and concurrence by the entire board sitting in banc.

Section 4. Clerk of Board—Compensation. The clerk of the county court shall be ex-officio clerk of the equalization board and shall keep an accurate journal of its proceedings. He shall receive as compensation five dollars ($5.00) per day for each day said board may remain in session.

Section 5. Compensation of Board Members. Each member of the board of equalization shall receive the sum of five dollars ($5.00) per day for each day engaged in the discharge of his official duties.

Section 6. Duty of Clerk—Rules for Equalization. The clerk shall lay before the board the returns of the real property made by the assessor and said board shall proceed to equalize the valuation of such real property so that each tract or lot shall be entered upon the tax books at its true value in money. For this purpose the board shall observe the following rules:

(1) It shall raise the valuation of such property as in the opinion of the board has been returned below its true value to such sum or amount as may be deemed its true value. Members of the board may actually enter upon and view any property as to the true value of which they may not be fully satisfied.

(2) It shall reduce the valuation of such property as in the opinion of the board has been returned above its true value as compared with the average valuation of real property in such county, or city, having due regard to the relative situation, quality of soil, improvements and natural advantages.

Section 7. Appeals. Any party aggrieved by any action of the equalization board may appeal therefrom to the county court by application in writing, in the time hereinafter provided. Any taxpayer of the State may appear before the board and object to the assessment of the property of another taxpayer either as made by or before the assessor or as fixed by said board. From the decision of the board, with reference thereto, such objecting taxpayer may appeal to the county court. From the final order of the county court, such objecting taxpayer or a taxpayer appealing from the board's action upon his own property, may further appeal to the circuit court and thence to the Supreme Court, under the rules and procedure applicable to other civil cases. Such appeals shall be prosecuted in the name of the aggrieved taxpayer appealing from his own assessment and in the case of a taxpayer objecting to the assessment of another's property in the name of the State of Arkansas on relation of the objector.

Section 8. Time of Appeals. All appeals taken from the board of equalization shall be taken to the October term of the county court and if taken after the regular term of said court has convened, shall be filed in said court before the fourth Wednesday in October; provided, that if any special session is held by the board, appeals may be taken from orders made thereat and heard in the term of court in which such special sessions may be held; provided, further, no appeal shall be heard after April 10th following the said October term of court.

Section 9. Notice to Tax-payer. The board of equalization in every instance where it raises the valuation of any property shall give notice by postal card or otherwise through the mail of such increase to the owner of the property or his agent, said notice to state the valuation returned by the assessor and that fixed by the board, and advising the addressee that he may appear before the county court on the second Wednesday of September next following the session of said board and show cause, if any exists, why the valuation of said property shall not be raised; provided, the county court may call a special session of the board at any time between the first day of January and the tenth day of April, by giving the members five days' notice.

Section 10. Powers of Equalization Board. The equalization board when in regular or special session shall have power to examine witnesses with respect to any matter under investigation, to hear complaints as to under-valuation or over-valuation of property, to equalize assessments by adding to or taking from the valuation of any real or personal property, including intangibles, within the county, to assess the property of any person, firm or corporation omitted from the tax rolls by the assessor, and to correct obvious errors occurring in the assessments. For the purpose of this equalization the board and members thereof shall have free access to the county records, and it is made their duty to carefully examine said records in making such investigation. One-half of the expense of the real estate assessment shall be paid by the State, and one-half by the county, and the county court shall draw its warrant on the county treasurer for one-half of the amount due to the assessors, as it shall, at the same time, certify to the Auditor the amount due to said assessor on the part of the State, the same being one-half of the total amount due the said assessor; thereupon the Auditor shall draw his warrant on the State Treasurer for said amount.

Section 11. Repealing Clause. All laws or parts of laws heretofore enacted and now remaining in force, which are in conflict herewith are hereby repealed.

Section 12. Emergency Clause. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and the same shall take effect and be in force immediately after its passage.

Approved March 28, 1919.

(Acts of Arkansas, 1919, General, pp. 348-353.)